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Regular Session, 1999  
Volume II

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CHAPTER 170

(H. B. 2424 —By Delegates Martin, Michael, Thompson and Rowe)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article eight of said chapter; and to amend and reenact section four, article ten of said chapter, all relating to exempting certain retirement funds from levy and attachment by creditors; exempting individual retirement and simplified employee pension accounts from attachments, levy and bankruptcy proceedings; and providing limits for exemptions.

Be it enacted by the Legislature of West Virginia:

That section seven, article seven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one, article eight of said chapter be amended and reenacted; and that section four, article ten of said chapter be amended and reenacted, all to read as follows:

Article
  7. Attachment.
  8. Exemptions from Levy.
 10. Federal Tax Liens; Orders and Decrees in Bankruptcy.

ARTICLE 7. ATTACHMENT.

§38-7-7. What property may be attached.

Every attachment issued under the provisions of this article may be levied upon any estate, real or personal, of the defendant named therein, or so much thereof as is sufficient to pay the amount for which it issues: Provided, That funds on deposit in an individual retirement account (IRA) including a simplified employee pension (SEP) in the name of the defendant are exempt from attachment: Provided, however, That such amount
shall be exempt only to the extent it is not, or has not been, subject to an excise or other tax on excess contributions under section 4973 and/or section 4979 of the Internal Revenue Code of 1986, or any successor provisions, regardless of whether such tax is or has been paid.

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-1. Exemptions of personal property.

Any husband, wife, parent or other head of a household residing in this state, or the infant children of deceased parents, may set apart and hold personal property not exceeding one thousand dollars in value to be exempt from execution or other process, except as hereinafter provided. Any mechanic, artisan or laborer residing in this state, whether he or she be a husband, wife, parent or other head of a household, or not, may hold the working tools of his or her trade or occupation to the value of fifty dollars exempt from forced sale or execution: Provided, That in no case shall the exemption allowed any one person exceed one thousand dollars: Provided, however, That funds on deposit in an individual retirement account (IRA) including a simplified employee pension (SEP) in the name of the defendant are exempt from attachment: Provided further, That such amount shall be exempt only to the extent it is not or has not been subject to an excise or other tax on excess contributions under section 4973 and/or section 4979 of the Internal Revenue Code of 1986, or any successor provisions, regardless of whether such tax is or has been paid.

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, and funds on deposit in an individual retirement account (IRA), including a simplified employee pension (SEP) regardless of the amount of funds, 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;

(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 1986; and

(D) With respect to an individual retirement account, including a simplified employee pension, such amount is subject to the excise tax on excess contributions under section 4973 and/or section 4979 of the Internal Revenue Code of 1986, or any successor provisions, regardless of whether such tax is paid.

(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 171

(Com. Sub. for S. B. 608 — By Senators Wooton, Dittmar, Boley, Kessler, Hunter, Bail, Plymale and Prezioso)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]
new section, designated section twenty-seven-a, all relating to prohibiting the filing of fraudulent liens; establishing means of invalidating and removing fraudulent liens that have been filed or recorded; intimidation and retaliation against public officials, employees, jurors and witnesses; fraudulent official proceedings and legal processes and filing and serving fraudulent legal processes; impersonating public officials, employees or tribunals; and civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article sixteen; that section twenty-seven, article five, chapter sixty-one of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-seven-a, all to read as follows:

Chapter 38. Liens.

ARTICLE 16. FRAUDULENT COMMON LAW LIENS.

§38-16-101. Definitions; application of definitions.
§38-16-102. Court of competent jurisdiction defined.
§38-16-103. Federal government defined.
§38-16-104. Federal official or employee defined.
§38-16-105. Lien defined.
§38-16-106. Nonconsensual common law lien defined.
§38-16-107. Purported court defined.
§38-16-108. State or local official or employee defined.
§38-16-201. Bonafide liens are not affected by this article.
§38-16-202. Real property common law liens unenforceable; personal property common law liens limited.
§38-16-301. Filing or recording a claim of nonconsensual common law lien is of no force or effect.
§38-16-302. No duty to accept filing of purported common law lien; no duty to reject filing of purported common law lien.
§38-16-303. Claim of lien against a federal official or employee or a state or local official or employee; performance of duties; validity; no duty to accept filing; notice of invalid lien.
§38-16-304. No duty to disclose record of common law lien.
§38-16-305. Immunity from liability for failure to accept filing or disclose common law lien.

§38-16-306. No duty to disclose fraudulent lien record; lien of purported court is a nullity.

§38-16-401. Notice by clerk of fraudulent lien.

§38-16-402. Action on fraudulent judgment lien.

§38-16-403. Action on fraudulent lien on property.

§38-16-404. Costs and attorneys' fees.

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§38-16-501. Liability.

§38-16-502. Cause of action.

§38-16-503. Venue.

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§38-16-505. Plaintiff's costs.

§38-16-506. Effect on other law.

PART 1. DEFINITIONS.

§38-16-101. Definitions; application of definitions.

For the purposes of this article, the words and phrases defined in the following sections of this part 1, and any variation of those words and phrases required by the context, have the meanings ascribed to them in this part 1. These definitions are applicable unless a different meaning clearly appears from the context.

§38-16-102. Court of competent jurisdiction defined.

"Court of competent jurisdiction" means a circuit court, magistrate court or administrative agency within this state or a court or administrative agency of another state, or a court or administrative agency of the federal government having jurisdiction and due legal authority to establish a charge against or an interest in real or personal property by ordering or authorizing the imposition of a lien against the property.

§38-16-103. Federal government defined.

"Federal government" means the government of the United States of America and includes the executive, legislative and judicial branches; and the term also includes quasi-public corporations and independent commissions or authorities primarily acting as instrumentalities or agencies of the United
§38-16-104. Federal official or employee defined.

"Federal official or employee" means an officer or employee of the federal government temporarily or permanently in the service of the United States, members of the military or naval forces of the United States, members of the national guard, and persons acting on behalf of the United States in an official capacity, whether with or without compensation.

§38-16-105. Lien defined.

"Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien, or a statutory lien.

§38-16-106. Nonconsensual common law lien defined.

"Nonconsensual common law lien" means a fraudulent lien that is misrepresented as a valid lien because it:

(1) Is not provided for by a specific statute;

(2) Does not derive its existence from the consent of the owner of the affected property; and

(3) Is not an equitable lien or other lien imposed by a court of competent jurisdiction.

§38-16-107. Purported court defined.

"Purported court" means a so-called common law court or other purported court or purported judicial entity that is not expressly created or established under the constitution or the laws of this state or of the United States.

§38-16-108. State or local official or employee defined.

"State or local official or employee" means a person, whether appointed or elected, providing services to a branch of state government or to a political subdivision of this state, whether with or without compensation.
PART 2. COMMON LAW LIENS.

§38-16-201. Bonafide liens are not affected by this article.

Regardless of whether such liens may also be considered to be common law liens, nothing in this article is intended to affect:

1. Statutory liens arising under an enactment of the Legislature;
2. Equitable liens, constructive liens and other liens that are imposed by a court of competent jurisdiction; or
3. Consensual liens now or hereafter recognized under the common law of this state.

§38-16-202. Real property common law liens unenforceable; personal property common law liens limited.

(a) A common law lien against real property is invalid and is not recognized or enforceable in this state.

(b) A common law lien claimed against personal property is invalid and is not recognized or enforceable if, at the time the lien is claimed, the claimant does not have:

1. Actual possession, lawfully acquired, of specific personal property against which the lien is asserted; or
2. Exclusive control, lawfully acquired, of specific personal property against which the lien is asserted.

(c) A valid common law lien claimed against personal property is destroyed or terminated if the person entitled to the lien fails to retain possession or control of the property, unless the person against whom the lien is asserted agrees, in writing, that the lien may continue after delivery of the property from the possession of the lienholder.

PART 3. PROVISIONS GOVERNING THE FILING OF CLAIMS OF COMMON LAW LIENS.

§38-16-301. Filing or recording a claim of nonconsensual common law lien is of no force or effect.
A nonconsensual common law lien is invalid and does not constitute a charge against property or create an interest in property. The filing or recording of a document that purports to evidence a nonconsensual common law lien is a nullity and is of no force or effect.

§38-16-302. No duty to accept filing of purported common law lien; no duty to reject filing of purported common law lien.

A clerk of a county commission or other person has no duty to accept for filing or recording any purported claim of a common law lien, because a common law lien is neither authorized by statute nor imposed by a court of competent jurisdiction. A clerk of a county commission or other person has no duty to reject for filing or recording any claim of a common law lien, and the inadvertent or negligent recordation of a claim of a common law lien by a clerk of a county commission or other recorder does not create a cause of action against that official.

§38-16-303. Claim of lien against a federal official or employee or a state or local official or employee; performance of duties; validity; no duty to accept filing; notice of invalid lien.

(a) Any claim of lien against a federal official or employee or a state or local official or employee that is based on the performance or nonperformance of that official's or employee's duties is invalid unless it arises from a specific order of a court of competent jurisdiction authorizing the filing of the lien or unless a specific statute authorizes the filing of the lien.

(b) A person is not obligated to accept for filing any purported claim of lien against a federal official or employee or a state or local official or employee that is based on the performance or nonperformance of that official's or employee's duties unless the claim is accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien. A person has no duty to reject for filing or recording any claim
of lien against a federal official or employee or a state or local
official or employee that is based on the performance or
nonperformance of that official’s or employee’s duties, and the
inadvertent or negligent recordation of such a claim by a clerk
of a county commission or other recorder does not create a
cause of action against that official.

(c) If a claim of lien as described in subsection (a) of this
section has been accepted for filing, the recording officer shall
accept for filing a notice of invalid lien signed and submitted by
the assistant United States attorney or other counsel represent-
ing the federal agency of which the individual is an official or
employee; the assistant attorney general or other counsel
representing the state agency, board, commission, department,
or institution of higher education of which the individual is an
official or employee; or the prosecuting attorney or municipal
attorney or other counsel representing the school district,
political subdivision, or unit of local government of this state of
which the individual is an official or employee. A copy of the
notice of invalid lien shall be mailed by the attorney to the
person who filed the claim of lien, at his or her last known
address. The clerk of the county commission shall file and
index the notice of invalid lien in the same class of records in
which the purported claim of lien was originally filed.

§38-16-304. No duty to disclose record of common law lien.

No person has a duty to disclose an instrument of record or
file that attempts to give notice of a common law lien. This
section does not relieve any person of any duty which otherwise
may exist to disclose a claim of lien authorized by statute or
imposed by order of a court of competent jurisdiction.

§38-16-305. Immunity from liability for failure to accept filing or
disclose common law lien.

A clerk of the county commission or other person is not
liable for the acceptance for filing of an invalid claim of a
nonconsensual common law lien, nor for the acceptance for
filing of a notice of invalid lien. A clerk of the county commis-
sion or other person is not liable for damages arising from a
§38-16-306. No duty to disclose fraudulent lien record; lien of purported court is a nullity.

(a) An attorney, title insurance company or other title examiner does not have a duty to disclose a fraudulent court record, document, or instrument purporting to create a nonconsensual common law lien asserting a claim on real property or an interest in real property in connection with a sale, conveyance, mortgage, or other transfer of the real property or interest in real property.

(b) A purported judgment lien or document establishing or purporting to establish a judgment lien against property in this state, that is issued or purportedly issued by a court or a purported court other than a court established under the laws of this state or the United States, is a nullity and has no effect in the determination of any title or right to the property.

PART 4. ACTIONS TO STRIKE OR REMOVE NONCONSENSUAL COMMON LAW LIEN.

§38-16-401. Notice by clerk of fraudulent lien.

(a) If a clerk of the county commission has a reasonable basis to believe in good faith that a document or instrument purporting to evidence an invalid nonconsensual common law lien has been filed or recorded or offered for filing or recording, the clerk shall provide a written notice as follows:

(1) If the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, the clerk shall provide written notice of the filing, recording, or submission for filing or recording to the stated or last known address of the person against whom the purported judgment, act, order, directive, or process is rendered; or

(2) If the document or instrument purports to create a lien or assert a claim on real or personal property or an interest in real or personal property, provide written notice of the filing,
16 recording, or submission for filing or recording to the stated or
17 last known address of the person named in the document or
18 instrument as the obligor or debtor and to any person named as
19 owning any interest in the real or personal property described
20 in the document or instrument.

21 (b)(1) If the document is not yet filed or recorded, the clerk
22 shall provide written notice under subsection (a) not later than
23 the second business day after the date that the document is
24 submitted for filing or recording; or

25 (2) If the document or instrument has been previously filed
26 or recorded, the clerk shall provide written notice under
27 subsection (a) not later than the second business day after the
28 date that the clerk becomes aware that the document or instru-
29 ment may be fraudulent.

30 (c) For purposes of this section, a document or instrument
31 is presumed to be fraudulent if:

32 (1) The document is styled as a judgment or other document
33 purporting to memorialize or evidence an act, an order, a
34 directive, or process of a purported court; or

35 (2) The document or instrument purports to create a lien or
36 security interest or otherwise create a charge against real or
37 personal property and:

38 (A) It is not a document or instrument provided for by the
39 constitution or laws of this state or of the United States;

40 (B) It is not created by implied or express consent or
41 agreement of the alleged obligor, debtor, or the owner of the
42 real or personal property or an interest in the real or personal
43 property, or by implied or express consent or agreement of an
44 agent, fiduciary, or other representative of that person; or

45 (C) It is not an equitable, constructive, or other lien
46 imposed by a court of competent jurisdiction.

§38-16-402. Action on fraudulent judgment lien.

1 (a) A person against whom a purported judgment was
2 rendered who has reason to believe that a document previously
IN THE CIRCUIT COURT OF_______ COUNTY,
WEST VIRGINIA

In Re: A Purported Judgment Lien Against

(Name of Purported Debtor)

MOTION FOR JUDICIAL REVIEW OF A DOCUMENT
PURPORTING TO CREATE A JUDGMENT LIEN

Now comes (name) and files this motion requesting a judicial determination of the status of a court, judicial entity, or judicial officer purporting to have taken an action that is the basis of a purported judgment lien filed in the office of the clerk of the county commission, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the person against whom the purported judgment was rendered.

II.

On (date), in the exercise of official duties as Clerk of the County Commission of (county name) County, West Virginia, the county clerk received and filed or filed and recorded the attached documentation containing (number) pages. The documentation purports to have been rendered on the basis of a judgment, act, order, directive, or process of a court, judicial entity, or judicial officer called "(name of purported court)" against one (name of purported debtor).

III.

Movant alleges that the purported court referred to in the attached documentation is one described in W.Va. Code, §38-16-108, as not legally created or established under the constitution or laws of this state or of the United States, and that the document therefore not be accorded lien status.
IV.

Movant further attests that the assertions contained herein are true and correct.

PRAYER

Movant requests the court to review the attached documentation and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

(Signature and typed name and address)

(b) The acknowledgment must be as follows:

THE STATE OF WEST VIRGINIA,
COUNTY OF ___________, To-wit:

I, __________________________, a notary public of said county; (or other officer or person authorized to take acknowledgments), do certify that ______________________, whose name (or names) is (or are) signed to the attached motion, dated the ______ day of _____________, ______, has (or have) this day acknowledged the same before me, in my said ________________.

Given under my hand this _________________ day of _____________.

______________________________
Notary Public, State of West Virginia

Notary’s printed name:

My commission expires:

(c) A motion filed under this section may be ruled on by a circuit judge in the county where the subject documentation was filed. The court’s finding may be made solely on a review of the documentation attached to the movant’s motion and without hearing any testimonial evidence. The court’s review may be made ex parte without delay or notice of any kind.
(d) The clerk of the circuit court may not charge a filing fee for filing a motion under this section.

(e) After reviewing the documentation attached to a motion under this section, the circuit judge shall enter appropriate findings of fact and conclusions of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed.

(f) The county clerk may not collect a filing fee for filing a district judge’s findings of fact and conclusions of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

IN THE CIRCUIT COURT OF __________ COUNTY,
WEST VIRGINIA

In Re: A Purported Judgment Lien Against

( Name of Purported Debtor)

JUDICIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A DOCUMENTATION PURPORTING TO CREATE A JUDGMENT LIEN

On the (number) day of (month), (year), in the above entitled action, this Court reviewed a motion verified by (name) and the documentation attached thereto. No testimony was taken from any party, nor was there any notice of the Court’s review, the Court having made the determination that a decision could be made solely on review of the documentation under the authority vested in the Court under W.Va. Code, §38-16-101, et seq.

The Court finds as follows (only an item checked and initialed is a valid court ruling):

[ ]. The documentation attached to the motion herein refers to a legally constituted court, judicial entity, or judicial officer created by or established under the constitution or laws of this state or of the United States. This judicial finding and conclusion of law does not constitute a finding as to any underlying claims of the parties.
The documentation attached to the motion herein DOES NOT refer to a legally constituted court, judicial entity, or judicial officer created by or established under the constitution or laws of this state or of the United States. There is no valid judgment lien created by the documentation.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its findings of fact and conclusions of law to a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject document.

Signed this ____ day of ______________, ______.

Judge,
Circuit Court of __ County,
West Virginia

§38-16-403. Action on fraudulent lien on property.
(a) A person who is the purported debtor or obligor or who owns real or personal property or an interest in real or personal property, and who has reason to believe that the document purporting to create a lien or a claim against the real or personal property or an interest in the real or personal property previously filed or submitted for filing and recording is fraudulent, may complete and file with the clerk of the circuit court a verified motion that contains, at a minimum, the information in the following suggested form:

IN THE CIRCUIT COURT OF ________________________
WEST VIRGINIA

In Re: A Purported Lien or Claim Against
(Name of Purported Debtor)

MOTION FOR JUDICIAL REVIEW OF
DOCUMENTATION PURPORTING TO
CREATE A LIEN OR CLAIM
Now comes (name) and files this motion requesting a judicial determination of the status of documentation or an instrument purporting to create an interest in real or personal property or a lien or claim on real or personal property or an interest in real or personal property filed in the office of the Clerk of (county name) County, West Virginia, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the purported obligor or debtor or person who owns the real or personal property or the interest in real or personal property described in the documentation.

II.

On (date), in the exercise of official duties as Clerk of the County Commission of (county name) County, West Virginia, the county clerk received and filed and recorded the documentation attached hereto and containing (number) pages. The documentation purports to have created a lien on real or personal property or an interest in real or personal property against one (name of purported debtor).

III.

Movant alleges that the documentation or instrument attached hereto is fraudulent, as defined by W.Va. Code, §38-16-101, et seq., and that the documentation or instrument should therefore not be accorded lien status.

IV.

Movant attests that assertions herein are true and correct.

V.

Movant does not request the court to make a finding as to any underlying claim of the parties involved and acknowledges that this motion does not seek to invalidate a legitimate lien. Movant further acknowledges that movant may be subject to sanctions, as provided by Rule 11 of the West Virginia Rules of Civil Procedure for Trial Courts of Record, if this motion is determined to be frivolous.
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PRAYER

Movant requests the court to review the attached documentation and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

________________________________________
(Signature and typed name and address)

(b) The acknowledgment must be as follows:

THE STATE OF WEST VIRGINIA,
COUNTY OF ____________, To-wit:

I, ___________________________, a notary public of said county; (or other officer or person authorized to take acknowledgments), do certify that ___________________________, whose name (or names) is (or are) signed to the attached motion, dated the ______ day of _________, _____; has (or have) this day acknowledged the same before me, in my said ________________.

Given under my hand this ________________ day of

________________________, ________

Notary Public, State of West Virginia

Notary's printed name:

My commission expires:

(c) A motion under this section may be ruled on by a circuit judge in the county where the subject document was filed. The court's finding may be made solely on a review of the documentation attached to the motion and without hearing any testimonial evidence. The court's review may be made ex parte without delay or notice of any kind.

(d) The clerk of the circuit court may not collect a filing fee for filing a motion under this section.
(e) After reviewing the documentation attached to a motion under this section, the circuit judge shall enter appropriate findings of fact and conclusions of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed. A copy of the findings of fact and conclusions of law shall be sent, by first class mail, to the movant and to the person who filed the fraudulent lien or claim at the last known address of each person within seven days of the date that the finding of fact and conclusion of law is issued by the judge.

(f) The county clerk may not collect a fee for filing a district judge's finding of fact and conclusion of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

IN THE CIRCUIT COURT OF_______ COUNTY,
WEST VIRGINIA

In Re: A Purported Judgment Lien Against

(Name of Purported Debtor)

JUDICIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A DOCUMENTATION PURPORTING TO CREATE A JUDGMENT LIEN

On the (number) day of (month), (year), in the above entitled action, this court reviewed a motion verified by (name) and the documentation attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation under the authority vested in the court under W.Va. Code, §38-16-101, et seq.

The court finds as follows (only an item checked and initialed is a valid court ruling):

[ ] The documentation or instrument attached to the motion herein IS asserted against real or personal property or an interest in real or personal property and:
240 (1) IS provided for by specific state or federal statutes or constitutional provisions;
241
242 (2) IS created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, or by consent of an agent, fiduciary, or other representative of that person; or
243
244 (3) IS an equitable, constructive, or other lien imposed by a court of competent jurisdiction created or established under the constitution or laws of this state or of the United States.
247 [ ] The documentation or instrument attached to the motion:
248 (1) IS NOT provided for by specific state or federal statutes or constitutional provisions;
249
250 (2) IS NOT created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;
253
254 (3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under the constitution or laws of this state or the United States; or
257
258 (4) IS NOT asserted against real or personal property or an interest in real or personal property. There is no valid lien or claim created by this documentation or instrument.
260
261 This court makes no finding as to any underlying claims of the parties involved and expressly limits its finding of fact and conclusion of law to a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject document.
§38-16-404. Costs and attorneys’ fees.

1. If, following a hearing on the matter, the court determines that the claim of lien is invalid, the court shall issue an order awarding costs and reasonable attorneys’ fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorneys’ fees to the lien claimant to be paid by the movant.

§38-16-405. Warning sign.

A clerk of the county commission shall post a sign, in letters at least one inch in height, that is clearly visible to the general public in or near the clerk’s office stating that it is a crime to intentionally or knowingly file a fraudulent court record or a fraudulent instrument with the clerk.

§38-16-406. Documents filed with secretary of state.

(a) If the lien or other claim that is the subject of judicial findings of fact and conclusions of law authorized by this article is one that is authorized by law to be filed with the secretary of state, any person may file a certified copy of the judicial findings of fact and conclusions of law in the records of the secretary of state, who shall file the certified copy of the finding in the same class of records as the subject document or instrument was originally filed and index it using the same names that were used in indexing the subject document or instrument.

(b) The secretary of state may charge a filing fee of five dollars for filing a certified copy of judicial findings of fact and conclusions of law under this section.

PART 5. LIABILITY FOR FRAUDULENT COURT RECORD OR A FRAUDULENT LIEN.

§38-16-501. Liability.
(a) A person may not make, present, or use a document or other record with:

(1) Knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property;

(2) Intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and

(3) Intent to cause another person to suffer:

(A) Physical injury;

(B) Financial injury; or

(C) Mental anguish or emotional distress.

(b) A person who violates subsection (a) is liable to each injured person for:

(1) The greater of:

(A) $10,000; or

(B) The actual damages caused by the violation;

(2) Court costs;

(3) Reasonable attorney’s fees; and

(4) Exemplary damages in an amount determined by the court.

§38-16-502. Cause of action.

The following persons may bring an action to enjoin violation of this article or to recover damages under this article:

(1) In the case of a fraudulent judgment lien, the person against whom the judgment is rendered; and

(2) In the case of a fraudulent lien or claim against real or personal property or an interest in real or personal property, the
§38-16-503. Venue.

An action under this part 5 may be brought in any circuit court in the county in which the recorded document is recorded or in which the real property is located.

§38-16-504. Filing fees.

(a) The fee for filing an action under this chapter is fifteen dollars. The plaintiff must pay the fee to the clerk of the court in which the action is filed. Except as provided by subsection (b), the plaintiff may not be assessed any other fee, cost, charge, or expense by the clerk of the court or other public official in connection with the action.

(b) The fee for service of notice of an action under this section charged to the plaintiff may not exceed:

(1) Twenty dollars if the notice is delivered in person; or

(2) The cost of postage if the service is by registered or certified mail.

(c) A plaintiff who is unable to pay the filing fee and fee for service of notice may file with the court an affidavit of inability to pay.

(d) Since the fee imposed under subsection (a) of this section is less than the filing fee the court imposes for filing other similar actions, if the plaintiff prevails in the action, the court may order a defendant to pay to the court the differences between the fee paid under subsection (a) and the filing fee the court imposes for filing other similar actions.

§38-16-505. Plaintiff's costs.

(a) The court shall award the plaintiff the costs of bringing the action if:

(1) The plaintiff prevails; and

(2) The court finds that the defendant, at the time the defendant caused the recorded document to be recorded or filed,
6 knew or should have known that the recorded document is fraudulent.

(b) For purposes of this section, the costs of bringing the action include all court costs, attorney's fees, and related expenses of bringing the action, including investigative expenses.

§38-16-506. Effect on other law.

This part 5 is cumulative of other law under which a person may obtain judicial relief with respect to a recorded document or other record.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-27. Intimidation of and retaliation against public officers and employees, jurors and witnesses; fraudulent official proceedings and legal processes against public officials and employees; penalties.

§61-5-27a. Fraudulent official proceedings; causing a public employee or official to file a fraudulent legal process; impersonation of a public official, employee or tribunal; penalties.

§61-5-27. Intimidation of and retaliation against public officers and employees, jurors and witnesses; fraudulent official proceedings and legal processes against public officials and employees; penalties.

(a) Definitions. — As used in this section:

(1) "Fraudulent" means not legally issued or sanctioned under the laws of this state or of the United States, including forged, false and materially misstated;

(2) "Legal process" means an action, appeal, document instrument or other writing issued, filed or recorded to pursue a claim against person or property, exercise jurisdiction, enforce a judgment, fine a person, put a lien on property, authorize a search and seizure, arrest a person, incarcerate a person or direct a person to appear, perform or refrain from performing a specified act. "Legal process" includes, but is not limited to, a complaint, decree, demand, indictment, injunction, judgment, lien, motion, notice, order, petition, pleading, sentence, subpoena, summons, warrant or writ;
"Official proceeding" means a proceeding involving a legal process or other process of a tribunal of this state or of the United States;

(4) "Person" means an individual, group, association, corporation or any other entity;

(5) "Public official or employee" means an elected or appointed official or employee, of a state or federal court, commission, department, agency, political subdivision or any governmental instrumentality;

(6) "Recorder" means a clerk or other employee in charge of recording instruments in a court, commission or other tribunal of this state or of the United States; and

(7) "Tribunal" means a court or other judicial or quasi-judicial entity, or an administrative, legislative or executive body, or that of a political subdivision, created or authorized under the constitution or laws of this state or of the United States.

(b) Intimidation; harassment. — It is unlawful for a person to use intimidation, physical force, harassment or a fraudulent legal process or official proceeding, or to threaten or attempt to do so, with the intent to:

(1) Impede or obstruct a public official or employee from performing his or her official duties;

(2) Impede or obstruct a juror or witness from performing his or her official duties in an official proceeding;

(3) Influence, delay or prevent the testimony of any person in an official proceeding; or

(4) Cause or induce a person to: (A) Withhold testimony, or withhold a record, document or other object from an official proceeding; (B) alter, destroy, mutilate or conceal a record, document or other object impairing its integrity or availability for use in an official proceeding; (C) evade an official proceeding summoning a person to appear as a witness or produce a record, document or other object for an official proceeding; or
(D) be absent from an official proceeding to which such person has been summoned.

(c) **Retaliation.** — It is unlawful for a person to cause injury or loss to person or property, or to threaten or attempt to do so, with the intent to:

1. Retaliate against a public official or employee for the performance or nonperformance of an official duty;
2. Retaliate against a juror or witness for performing his or her official duties in an official proceeding;
3. Retaliate against any other person for attending, testifying or participating in an official proceeding, or for the production of any record, document or other object produced by a person in an official proceeding.

(d) **Subsection (b) offense.** — A person who is convicted of an offense under subsection (b) is guilty of a misdemeanor and shall be confined in jail for not more than one year or fined not more than one thousand dollars, or both.

(e) **Subsection (c) or subsequent offense.** — A person convicted of an offense under subsection (c) or a second offense under subsection (b) is guilty of a felony and shall be confined in the penitentiary not less than one nor more than ten years or fined not more than two thousand dollars, or both.

(f) **Civil cause of action.** — A person who violates this section is liable in a civil action to any person harmed by the violation for injury or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney’s fees, court costs and other expenses incurred as a result of prosecuting a civil action commenced under this subsection, which is not the exclusive remedy of a person who suffers injury or loss to person or property as a result of a violation of this section.

(g) **Civil sanctions.** — In addition to the criminal and civil penalties set forth in this section, any fraudulent official proceeding or legal process brought in a tribunal of this state in violation of this section shall be dismissed by the tribunal and...
the person may be ordered to reimburse the aggravated person for reasonable attorney's fees, court costs and other expenses incurred in defending or dismissing such action.

(1) **Refusal to record.** — A recorder may refuse to record a clearly fraudulent lien or other legal process against a public official or employee or his or her property. The recorder does not have a duty to inspect or investigate whether a lien or other legal process is fraudulent nor is the recorder liable for refusing to record a lien or other legal process that the recorder believes is in violation of this section.

(2) If a fraudulent lien or other legal process against a public official or employee or his or her property is recorded then:

(A) **Request to release lien.** — The public official or employee may send a written request by certified mail to the person who filed the fraudulent lien or legal process, requesting the person to release or dismiss the lien or legal process. If such lien or legal process is not properly released or dismissed within twenty-one days, then it shall be inferred that the person intended to harass the public official or employee in violation of subsection (b) of this section and shall be subject to the criminal penalties in subsection (d) of this section and any other remedies provided for in this section; or

(B) **Notice of fraudulent lien.** — A government attorney on behalf of the public official or employee may record a notice of fraudulent lien or legal process with the recorder who accepted the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process and cause it to be removed from the records. No filing fee shall be charged for the filing of the notice.

(h) A person's lack of belief in the jurisdiction or authority of this state or of the United States is no defense to prosecution of a civil or criminal action under this section.

(i)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate public officials or employees.
(2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate right to freely assemble, express opinions or designate group affiliation.

(3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate access to a tribunal of this state or prevents a person from instituting or responding to a lawful action.

§61-5-27a. Fraudulent official proceedings; causing a public employee or official to file a fraudulent legal process; impersonation of a public official, employee or tribunal; penalties.

(a) Definitions. — For the purpose of this section, the following terms have the meaning ascribed to them in section twenty-seven of this article: "Fraudulent", "legal process", "official proceeding", "person", "public official or employee", "recorder", and "tribunal".

(b) Fraudulent official proceedings. — It is unlawful for a person to knowingly engage in a fraudulent official proceeding or legal process.

(c) Fraudulent filings. — It is unlawful for a person to knowingly cause a public official or employee to file, record or deliver a fraudulent claim of indebtedness, common law lien or other lien, financial statement, complaint, summons, judgment, warrant or other legal process, including those issued as the result of a fraudulent official proceeding.

(d) Fraudulent service. — It is unlawful for a person to knowingly serve a public official or employee with a fraudulent claim of indebtedness, common law lien or other lien, financial statement, complaint, summons, judgment, warrant or other legal process, including those issued as the result of a fraudulent official proceeding.

(e) Impersonation. — It is unlawful for a person to knowingly impersonate or purport to exercise any function of a public official, employee, tribunal or official proceeding without legal authority to do so and with the intent to induce a
(f) *First offense.* — Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than one year or fined not more than one thousand dollars, or both.

(g) *Second offense.* — Any person convicted of a second or subsequent offense under this section is guilty of a felony and shall be confined in the penitentiary not less than one nor more than ten years or fined not more than two thousand dollars, or both.

(h) *Civil cause of action.* — A person who violates this section is liable in a civil action to any person harmed by the violation for injury or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney’s fees, court costs and other expenses incurred as a result of prosecuting the civil action commenced under this subsection, which is not the exclusive remedy of a person who suffers injury or loss to person or property as a result of a violation of this section.

(i) *Civil sanctions.* — In addition to the criminal and civil penalties set forth in this section, a fraudulent official proceeding or legal process brought in a tribunal in violation of this section shall be dismissed by the tribunal and the person may be ordered to reimburse the aggrieved person for reasonable attorney’s fees, court costs and other expenses incurred in defending or dismissing such action.

(1) *Refusal to record.* — A recorder may refuse to record a clearly fraudulent lien or other legal process against a person or his or her property. The recorder does not have a duty to inspect or investigate whether a lien or other legal process is fraudulent nor is the recorder liable for refusing to record a lien or other legal process that the recorder believes is in violation of this section.
(2) If a fraudulent lien or other legal process against a person or his or her property is recorded then:

(A) Request to release lien. — A person may send a written request by certified mail to the person who filed the fraudulent lien or legal process, requesting the person to release or dismiss the lien or legal process. If such lien or legal process is not properly released or dismissed within twenty-one days, then the person shall be presumed to have intended to have committed a violation of this section and shall be subject to the penalties provided for in this section; or

(B) Petition to circuit court. — A person may petition the circuit court of the county where the fraudulent lien or legal process was recorded for an order that may be granted ex parte directing the person who filed the lien or legal process to appear before the court and show cause why the lien or legal process should not be released or dismissed, deemed fraudulent and the person penalized as provided for in this section.

(i) The petition shall set forth a concise statement of the facts and the grounds upon which relief is requested.

(ii) No filing fee shall be charged for the filing of such petitions.

(iii) The order to show cause shall be served upon the person who filed the lien or legal process according to rule 4 of the rules of civil procedure and the date of the hearing set within twenty-one days of the order.

(iv) The order to show cause shall clearly state that if the person who filed the lien or legal process fails to appear at the time and place noticed in the order, then the lien or legal process shall be released or dismissed, deemed fraudulent and the person shall be subject to the penalties provided for in this section.

(v) If a hearing takes place or if, on its own motion, the circuit court determines that the lien or legal process is fraudulent, then the circuit court shall release or dismiss it and subject the person to the penalties provided for in this section.
If the circuit court determines that the lien or legal process is valid, then the circuit court shall issue an order stating such and may award reasonable attorney’s fees, court costs and other expenses to the prevailing party.

(j) A person's lack of belief in the jurisdiction or authority of this state or of the United States is no defense to prosecution of a civil or criminal action under this section.

(k)(1) Nothing in this section prohibits or in any way limits the lawful acts of a legitimate public official or employee.

(2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate right to freely assemble, express opinions or designate group affiliation.

(3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate access to a tribunal of this state, or prevents a person from instituting or responding to a lawful action.

CHAPTER 172

(S. B. 374 — By Senator Craigo)

[Passed March 10, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying that in each criminal case in a magistrate court in which a defendant is convicted, costs are to be assessed by the magistrate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COSTS, FINES AND RECORDS.
§50-3-2. Costs in criminal proceedings.

(a) In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, there shall be imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of fifty-five dollars. A magistrate shall not collect costs in advance. A magistrate court shall deposit five dollars from each of the criminal proceedings fees collected pursuant to this section in the court security fund created in section fourteen, article three, chapter fifty-one of this code.

(b) A magistrate shall assess costs in the amount of two dollars and fifty cents for issuing a sheep warrant and the appointment and swearing appraisers and docketing the proceedings.

(c) In each criminal case which must be tried by the circuit court but in which a magistrate renders some service, costs in the amount of ten dollars shall be imposed by the magistrate court and shall be certified to the clerk of the circuit court in accordance with the provisions of section six, article five, chapter sixty-two of this code.

CHAPTER 173

(H. B. 2731 — By Delegates Staton, Hines, Capito, Johnson, Faircloth, Linch and Hunt)

[Passed March 4, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections six-a, six-b, six-c, six-d and twenty, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six of said article; and to further amend said article by adding thereto three new sections, designated sections seven, eight and eight-a, all relating to applications for a marriage license; eliminating requirements for a blood test; prescribing
which county clerks may issue licenses, based on residency of applicants; establishing a three-day waiting period before a license may issue if either or both applicants is under eighteen years of age; providing for a circuit judge to dispense with or shorten the waiting period in case of emergency or extraordinary circumstances; setting forth the contents of an application for a marriage license; providing for execution and recordation of the marriage license; requiring proof of age by applicants; and prohibiting certain unlawful acts by the clerk of the county commission, and defining misdemeanor offenses and establishing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. MARRIAGE.

§48-1-6. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.

§48-1-7. Contents of application for marriage license; execution of application; recordation of application.


§48-1-8a. Unlawful acts by clerk of county commission; penalties.

§48-1-6. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.

(a) If one or both of the applicants are residents of this state, they may apply for a marriage license to be issued by the clerk of the county commission of the county in which a resident applicant usually resides. If both parties are nonresidents of this state, they may apply for a license to be issued by the clerk of the county commission in any county in this state.

(b) Except as otherwise provided in subsection (c) of this section, if either or both of the applicants for a marriage license is under eighteen years of age, the clerk of the county commis-
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10 sion may not issue a marriage license until two full days elapse after the day the license application is filed.

12 (c) In case of an emergency or extraordinary circumstances, as shown by affidavit or other proof, a circuit judge of the county in which an application for a marriage license will be filed may order the clerk of the county commission to issue a license at any time before the expiration of the waiting period prescribed in subsection (b) of this section. The clerk of the county commission shall attach a certified copy of the judge’s order to the application and issue the marriage license in accordance with the order. If the judge or judges of the county in which the application will be filed are absent or incapacitated, the order may be made and directed to the clerk of the county commission of the county by a circuit judge in any adjoining judicial circuit, or a special judge appointed by the supreme court of appeals.

26 (d) Applications for licenses may be received and licenses may be issued by the clerk of the county commission at anytime the office of the clerk is officially open for the conduct of business.

§48-1-7. Contents of application for marriage license; execution of application; recordation of application.

1 (a) The application for a marriage license must contain a statement of the full names of both parties, their social security account numbers, dates of birth, places of birth and residence addresses. If either of the parties is a legal alien in the United States of America and has no social security account number, the tourist or visitor visa number or number equivalent to a United States social security account number must be provided.

8 (b) Every application for a marriage license must contain the following statement:

“"The laws of this state affirm your right to enter into this marriage and at the same time to live within the marriage free from violence and abuse. Neither of you is the property of the other. Physical abuse, sexual abuse, battery and assault of a spouse or other family member, and other provisions of the
criminal laws of this state are applicable to spouses and other family members and these violations are punishable by law.”

(c) Both parties to a contemplated marriage are required to sign the application for a marriage license, under oath, before the clerk of the county commission or another person authorized to administer oaths under the laws of this state.

(d) The clerk shall record the application for a marriage license in the register of marriages provided for in section eleven of this article. The clerk shall note the date of the filing of the application in the register. The notation, or a certified copy thereof, is legal evidence of the facts contained in the license.


(a) At the time of the execution of the application, the clerk or the person administering the oath to the applicants shall require evidence of the age of each of the applicants. Evidence of age may be as follows:

(1) A certified copy of a birth certificate or a duplicate thereof produced by any means that accurately reproduces the original;

(2) A voter’s registration certificate;

(3) An operator’s or chauffeur’s license;

(4) The affidavit of both parents or the legal guardian of the applicant; or

(5) Other good and sufficient evidence.

(b) If an affidavit is relied upon as evidence of the age of an applicant, and if one parent is dead, the affidavit of the surviving parent or of the guardian of the applicant is sufficient. If both parents are dead, the affidavit of the guardian of the applicant is sufficient. If the parents of the applicant live separate and apart, the affidavit of the parent having legal custody of the applicant is sufficient.
§48-1-8a. Unlawful acts by clerk of the county commission; penalties.

(a) It is unlawful for a clerk of the county commission to do any of the following acts:

(1) To make a false entry as to the date of application for a marriage license;

(2) To issue a marriage license prior to the end of the required three-day period (unless a circuit judge dispenses with this requirement by order pursuant to subsection (c), section six of this article);

(3) To issue a license on any Sunday or a legal holiday; or

(4) To receive an application for a marriage license or issue a marriage license in any place other than the office of the clerk of the county commission.

(b) A clerk of the county commission who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by confinement in jail for not less than three months nor more than nine months, or by both such fine and confinement, in the discretion of the court.

(c) A clerk of the county commission who otherwise knowingly issues a marriage license contrary to law is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by confinement in jail for not more than one year, or by both such fine and confinement, in the discretion of the court.

CHAPTER 174

(S. B. 524 — By Senators Prezioso, Edgeill, Plymale and Minard)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten, relating to requiring compliance with the Military Selective Service Act.

Be it enacted by the Legislature of West Virginia:

That article one-f, chapter fifteen 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, to read as follows:

ARTICLE IF. PRIVILEGES AND PROHIBITIONS.

§15-1F-10. Selective service registration and compliance.

(a) A person may not enroll in a state-supported institution of postsecondary higher education unless he is in compliance with the Military Selective Service Act, 50 U. S. C. Appendix §451, et seq., and the amendments thereto.

(b) A person may not receive a loan, grant, scholarship or other financial assistance for postsecondary higher education funded by state revenue, including federal funds or gifts and grants accepted by this state, or receive a student loan guaranteed by the state unless he is in compliance with the Military Selective Service Act.

(c) No male person who has attained the age of eighteen years who fails to be in compliance with the Military Selective Service Act is eligible for employment by or service with the state or a political subdivision of the state, including all boards, commissions, departments, agencies, institutions and instrumentalities.

(d) It is the duty of all officials having charge of and authority over the hiring of employees by the state or political subdivisions, and over state-supported institutions of postsecondary higher education, and over the granting of state supported financial assistance for postsecondary higher education as described in this section to assure themselves that applicants are in compliance with the Military Selective Service Act.
(e) A person may not be denied a right, privilege or benefit under this section by reason of failure to present himself for and submit to the requirement to register pursuant to the Military Selective Service Act if:

(1) The requirement for the person to so register has terminated or become inapplicable to the person; and

(2) The person is or has already served in the armed forces or has a condition that would preclude acceptability for military service.

CHAPTER 175

(H. B. 2617 — By Delegates Michael, Warner and Frederick)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-nine; and to amend and reenact section sixty-three, article two of said chapter, all relating to office of miners' health, safety and training; administration; enforcement; reciprocity of mine foreman certification and experienced miner certification; fees for permits and certificates of approval; providing that the fees collected for certificates be placed in the operating permit fees fund and providing for expenditure of moneys placed in the fund.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-two-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 thirty-nine; and that section sixty-three, article two of said chapter be amended and reenacted, all to read as follows:
ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.


(a) Beginning the first day of April, one thousand nine hundred ninety-nine, and notwithstanding any other provisions in this code to the contrary, the director, in consultation with the board of miner training, education and certification, established pursuant to the provisions of article seven of this chapter, shall make reciprocity of mine foreman certification and experienced miner certification available to any person certified by a state which accepts West Virginia's mine foreman or experienced miner certifications, if that state's qualifications, examination and certification criteria are substantially equivalent to those utilized by this state.

(b) A person requesting either of these certifications by reciprocity shall submit photographic identification, a current copy of his or her certification card or certificate, verifiable documentation of all degrees held, continuing education successfully completed, and documentation of other training, if required for the certification, and shall also comply with any other criteria as the director, in consultation with the board of miner training, education and certification, may reasonably require from time to time to effectively carry out the provisions of this section: Provided, That the criteria shall include, but is not limited to, the following minimum requirements: (1) When a reciprocity agreement applicable to mine foreman certification has been established with another state, any applicant holding a mine foreman certificate from that state shall take the component of the West Virginia mine foreman certification examination that pertains only to specific West Virginia mining laws and rules and shall pass the examination with a score of at least eighty percent prior to being issued a West Virginia mine foreman certificate; (2) when a reciprocity agreement applica-
31 ble to experienced miner certification has been established with
32 another state, any applicant holding an experienced miner’s
33 certificate from that state shall receive hazard training in
34 accordance with provisions contained in 30 CFR Part 48.11 if
35 the applicant is an underground miner, or in accordance with
36 the provisions contained in 30 CFR Part 48.31 if the applicant
37 is a surface miner, and shall receive instruction in West
38 Virginia mining laws and rules pertinent to any duties that are
39 or will be assigned the miner prior to the miner performing any
40 duties; and (3) records of all training and instruction shall be
41 kept in a book provided exclusively for that purpose which shall
42 be made available upon request to an authorized representative
43 of the director and to authorized representatives of miners in or
44 at the mine.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-63. No mine to be opened or reopened without prior
approval of the director of the office of miners’
health, safety and training; certificate of ap­
proval; approval fees; extension of certificate of
approval; certificates of approval not transfer­
able; section to be printed on certificates of ap­
proval.

(a) No mine may be opened or reopened unless prior
approval has been obtained from the director of the office of
miners’ health, safety and training. The director may not
unreasonably withhold approval. The operator shall pay a fee of
one hundred dollars for the approval, which shall be tendered
with the application for approval: Provided, That mines
producing coal solely for the operator’s use shall be issued a
permit without charge if coal production will be less than fifty
tons a year.

Within thirty days after the first day of January of each
year, the holder of a permit to open a mine shall apply for the
extension of the permit for an additional year. The permit,
evidenced by a document issued by the director, shall be
granted as a matter of right for a fee of one hundred dollars if,
at the time application is made, the permit holder is in compli-
ance with the provisions of section seventy-seven of this article
and has paid or otherwise appealed all coal mine assessments
issued to the mine if operated by the permit holder and imposed
under article one of this chapter. Applications for extension of
permits not submitted within the time required shall be pro-
cessed as an application to open or reopen a mine and shall be
accompanied by a fee of one hundred dollars.

(b) Permits issued pursuant to this section are not transfer-
able.

(c) If the operator of a mine is not the permit holder as
defined in subsection (a) of this section, then the operator shall
apply for and obtain a certificate of approval to operate the
mine on which the permit is held prior to commencing opera-
tions. The operator shall pay a fee of one hundred dollars,
which payment shall be tendered with the application for
approval. The approval, evidenced by a certificate issued by the
director, shall be granted if, at the time application is made, the
applicant is in compliance with the provisions of section
seventy-seven of this article and has paid or otherwise appealed
all coal mine assessments imposed on the applicant for the
certificate of approval under article one of this chapter.

(d) In addition to the director's authority to file a petition
for enforcement under subdivision (4), subsection (a), section
twenty-one, article one of this chapter, if an operator holding a
certificate of approval issued pursuant to subsection (c) of this
section, has been assessed a civil penalty in accordance with
section twenty-one, article one of this chapter, and its imple-
menting rules, and the penalty has become final, fails to pay the
penalty within the time prescribed in the order, the director or
the authorized representative of the director, by certified mail,
return receipt requested, shall send a notice to the operator
advising the operator of the unpaid penalty. If the penalty is not
paid in full within sixty days from the issuance of the notice of
delinquency by the director, then the director may revoke the
operator's certificate of approval: Provided, That the operator
to whom the delinquency notice is issued has thirty days from
receipt of the delinquency notice to request, by certified mail,
return receipt requested, a public hearing held in accordance
with the procedures of section seventeen, article one of this
chapter, and its implementing rules, including application for
temporary relief. Once the operator's certificate of approval is
revoked pursuant to this subsection, the operator may not obtain
any certificate of approval under the provisions of this section
to operate any other mine until that operator pays the delinquent
penalties that have become final.

(e) Every firm, corporation, partnership or individual that
contracts to perform services or construction at a coal mine is
considered to be an operator and shall apply for and obtain a
certificate of approval prior to commencing operations:
Provided, That these persons shall only be required to obtain
one certificate annually: Provided, however, That persons such
as, but not limited to, consultants, mine vendors, office equip-
ment suppliers and maintenance and delivery personnel are
excluded from this requirement to obtain a certificate of
approval. Operators who are required to obtain a certificate of
approval pursuant to the provisions of this subsection shall pay
a fee of one hundred dollars which shall be tendered with the
application for approval. Approval evidenced by a certificate
issued by the director, shall be granted if, at the time the
application is made, the applicant has paid or otherwise
appealed all coal mine assessments imposed on the applicant
under article one of this chapter.

Within thirty days after the first day of January of each
year, the holder of a certificate of approval shall apply for the
extension of that approval for an additional year. Applications
for extension shall be accompanied by a fee of one hundred
dollars. An extension shall be granted if, at the time application
is made, the applicant has paid or otherwise appealed all coal
mine assessments imposed on the applicant under article one of
this chapter. All delinquent assessments which have been
imposed upon a certificate of approval holder or applicants
under this section may not be imposed upon any permit holder
or certificate of approval holder or any applicant pursuant to
subsection (a) or (c) of this section.
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90 (f) The provisions of this section shall be printed on the
91 reverse side of every permit issued under subsection (a) of this
92 section and certificate of approval issued under subsection (e)
93 of this section.

94 (g) The district mine inspector shall conduct a pre-inspec-
95 tion of the area proposed for underground mining prior to
96 issuance of any new opening permit approval.

97 (h) All moneys collected by the office of miners' health,
98 safety and training for the approval fees set forth in subsections
99 (a), (c) and (e) of this section shall be deposited with the
100 treasurer of the state of West Virginia to the credit of the
101 general administration—operating permit fees fund. The
102 operating permit fees fund shall be used by the director who is
103 authorized to expend the moneys in the fund for the administra-
104 tion of this chapter.

CHAPTER 176

(Com. Sub. for S. B. 123 — By Senator Dittmar)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article seven, chapter
twenty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to further amend said article by
adding thereto a new section, designated section twelve-b, all
relating to motorboat operation, numbering and registration;
increasing registration fees; requiring education certification for
certain individuals; providing for certain exemptions; establishing
the requirements for a boating safety education certificate; and
criminal offenses.

Be it enacted by the Legislature of West Virginia:

That section twelve, article seven, chapter twenty 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 twelve-b, all to read as follows:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

§20-7-12b. Boating safety education certificate.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

Every motorboat, as defined in this section, operating upon public waters within the territorial limits of this state, shall be numbered as provided in this section:

(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the commissioner on forms approved by the division of motor vehicles. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of fifteen dollars for a three-year registration period if the motorboat is propelled by a motor of three or more horsepower: Provided, That beginning on the first day of April, two thousand, the fee for a three-year registration period is as follows:

(1) Class A, motorboats less than sixteen feet in length, thirty dollars;

(2) Class 1, motorboats sixteen feet or over and less than twenty-six feet in length, forty-five dollars;

(3) Class 2, motorboats twenty-six feet or over and less than forty feet in length, sixty dollars; and
(4) Class 3, forty feet in length or over, seventy-five dollars.

The fee may be prorated by the commissioner for periods of less than three years. There is no fee for motorboats propelled by motors of less than three horsepower. All fees, including those received under subdivision (b) of this section, shall be deposited in the state treasury and fifty percent shall be credited to the division of motor vehicles and shall be used and paid out upon order of the commissioner solely for the administration of the certificate of number system. The remaining fifty percent shall be credited to the division of natural resources and shall be used and paid out upon order of the director solely for the enforcement and safety education of the state boating system. Upon receipt of the application in approved form, the commissioner shall enter the application upon the records of the division and issue to the applicant a number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in the manner prescribed by rules of the commissioner in order that it is clearly visible. The owner shall maintain the number in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which it is issued, whenever the motorboat is in operation.

(b) In order to permit a motorboat sold to a purchaser by a dealer to be operated pending receipt of the certificate of number from the commissioner, the commissioner may deliver temporary certificates of number to in turn be issued to purchasers of motorboats to dealers, upon application by the dealer and payment of one dollar for each temporary certificate. Every person who is issued a temporary certificate by a dealer shall, under the provisions of subdivision (a) of this section, apply for a certificate of number no later than ten days from the date of issuance of the temporary certificate. A temporary certificate expires upon receipt of the certificate, upon rescission of the contract to purchase the motorboat in question or upon the expiration of forty days from the date of issuance, whichever occurs first. It is unlawful for any dealer to issue any temporary certificate knowingly containing any misstatement of fact or
knowingly to insert any false information on the face of the temporary certificate. The commissioner may by rule prescribe additional requirements upon the dealers and purchasers that are consistent with the effective administration of this section.

(c) The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this state in excess of the sixty-day reciprocity period provided for in section fourteen of this article. The recordation shall be in the manner and pursuant to procedure required for the award of a number under subdivision (a) of this section, except that the commissioner shall not issue an additional or substitute number.

(d) If the ownership of a motorboat changes, the new owner shall file a new application form with the required fee with the commissioner who shall award a new certificate of number in the same manner as provided for in an original award of number.

(e) In the event that an agency of the United States government has in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this article by the division of motor vehicles shall be in conformity with the federal system.

(f) The license is valid for a maximum period of three years. If at the expiration of that period ownership has remained unchanged, the commissioner shall, upon application and payment of the proper fee, grant the owner a renewal of the certificate of number for an additional three-year period.

(g) The owner shall furnish the commissioner notice of the transfer of all or any part of an interest, other than the creation of a security interest, in a motorboat numbered in this state pursuant to subdivisions (a) and (b) of this section, or of the destruction or abandonment of the motorboat, within fifteen days of the transfer of interest, destruction or abandonment. The transfer, destruction or abandonment shall terminate the
certificate of number for the motorboat, except that in the case of a transfer of a part interest which does not affect the owner’s right to operate the motorboat, the transfer shall not terminate the certificate of number.

(h) Any holder of a certificate of number shall notify the commissioner within fifteen days if his or her address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, furnish the commissioner with his or her new address. The commissioner may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(i) An owner shall not paint, attach or otherwise display a number other than the number awarded to a motorboat or granted reciprocity pursuant to this article on either side of the bow of the motorboat.

(j) The commissioner shall on or before the thirtieth day of August of each year, forward to the assessor of each county a list of the names and addresses of all persons, firms and corporations owning vessels and operating the vessels or other boats registered with the commissioner under the provisions of this article. In furnishing this information to each county assessor, the commissioner shall include information on the make and model of the vessels and other equipment required to be registered for use by the owner or operator of the boats under the provisions of this article: Provided, That the commissioner is not required to furnish the information to the assessor if the cost price of the vessel does not exceed five hundred dollars or the cost of the motor does not exceed two hundred fifty dollars.

(k) No person may operate an unlicensed motorboat upon any waters of this state without first acquiring the certificate of number or license as required by law.

§20-7-12b. Boating safety education certificate.

(a) Except as otherwise provided in subsection (c) of this section, beginning on the first day of January, two thousand
one, no person born on or after the thirty-first day of December, one thousand nine hundred eighty-six, may operate a motorboat or personal watercraft on any waters of this state without first having obtained a certificate of boating safety education from this or any other state, which certificate was obtained by satisfactorily completing a course of instruction in boating safety education administered by the United States coast guard auxiliary; the United States power squadron; the West Virginia division of natural resources; any person certified to teach the course administered by West Virginia natural resources boating safety education section personnel; or any person authorized to teach the course prescribed by the national association of state boating law administrators in this or any other state.

(b) Any person who is subject to subsection (a) of this section shall possess the certificate of boating safety education when operating a motorboat or personal watercraft on the waters of this state and shall show the certificate on demand of any West Virginia conservation officer or other law-enforcement officer authorized to enforce the provisions of this chapter.

(c) The following persons are exempt from the requirements of subsection (a) of this section:

(1) A person who is a nonresident of this state and who is visiting the state for sixty days or less in a motorboat or personal watercraft from another state if that person:

(A) Is fifteen years of age or older; and

(B) Has been issued a boating safety education certificate by his or her state of residence in accordance with the criteria recommended by the national association of state boating law administration;

(2) A person who is visiting the state for ninety days or less in a motorboat or personal watercraft from a country other than the United States;

(3) A person who is operating a motorboat or personal watercraft in connection with commercial purposes; and
(4) A person who is operating a motorboat or personal watercraft which was purchased by the person within the previous forty-five-day period and who has not been previously charged with a violation of any provision of this chapter involving the use or registration of a motorboat or personal watercraft.

(d) The division shall issue a certificate of boating safety education to a person who:

(1) Passes any course prescribed in subsection (a) of this section; or

(2) Passes a boating safety equivalency examination administered by persons authorized to administer a boating safety education course as outlined in subsection (a) of this section. Upon request, the division shall provide, without charge, boating safety education materials to persons who plan to take the boating safety equivalency examination.

(e) No person who owns a motorboat or personal watercraft or who has charge over a motorboat or personal watercraft may authorize or knowingly permit it to be operated in violation of subsection (a) of this section.

(f) The provisions of subsection (a) of this section may only be enforced as a secondary action when the officer detains an operator of a motorboat or personal watercraft upon probable cause of a violation of another provision of this code or rules adopted in accordance with the code. A person may not be taken immediately to a court or detention facility solely for a violation of subsection (a) of this section.

CHAPTER 177

(S. B. 244 — By Senator Ross)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections two and seven, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the definition of "motor carrier"; and eliminating the limitation that a trip permit can only be issued three times in one fiscal year.

Be it enacted by the Legislature of West Virginia:

That sections two and seven, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14A. MOTOR CARRIER ROAD TAX.


§11-14A-7. Identification markers; fees; criminal penalty.


For purposes of this article:

(1) "Commissioner" or "tax commissioner" means the tax commissioner of the state of West Virginia or his duly authorized agent.

(2) "Gallon" means two hundred thirty-one cubic inches of liquid measurement, by volume: Provided, That the commissioner may by rule prescribe other measurement or definition of gallon.

(3) "Gasoline" means any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as hereinafter defined.

(4) "Highway" means every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, which is maintained by this state or some taxing subdivision or unit thereof or the federal government or any of its agencies.

(5) "Identification marker" means the decal issued by the commissioner for display upon a particular motor carrier and authorizing a person to operate or cause to be operated a motor carrier upon any highway of the state.
(6) "Lease" means any oral or written contract for valuable consideration granting the use of a motor carrier.

(7) "Motor carrier" means any vehicle used, designed or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding twenty-six thousand pounds or having three or more axles regardless of weight or is used in combination when the weight of such combination exceeds twenty-six thousand pounds or registered gross vehicle weight: Provided, That the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds. The term motor carrier does not include any type of recreational vehicle.

(8) "Operation" means any operation of any motor carrier, whether loaded or empty, whether for compensation or not, and whether owned by or leased to the person who operates or causes to be operated such motor carrier.

(9) "Person" means and includes any individual, firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, and means and includes the officers, directors, trustees or members of any firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(10) "Pool operation" means any operation whereby two or more taxpayers combine to operate or cause to be operated a motor carrier or motor carriers upon any highway in this state.

(11) "Purchase" means and includes any acquisition of ownership of property or of a security interest for a consideration.

(12) "Recreational vehicles" means vehicles such as motor homes, pickup trucks with attached campers and buses, when used exclusively for personal pleasure by an individual. In order
to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

(13) "Road tractor" means every motor carrier designed and used 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.

(14) "Sale" means any transfer, exchange, gift, barter or other disposition of any property or security interest for a consideration.

(15) "Special fuel" means any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term "special fuel" shall include products commonly known as natural or casinghead gasoline but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practicably suited for use as fuel in an internal combustion engine.

(16) "Tax" includes, within its meaning, interest, additions to tax and penalties, unless the intention to give it a more limited meaning is disclosed by the context.

(17) "Taxpayer" means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article.

(18) "Tractor truck" means every motor carrier 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.

(19) "Truck" means every motor carrier designed, used or maintained primarily for the transportation of property and having more than two axles.

§11-14A-7. Identification markers; fees; criminal penalty.

(a) Registration of motor carriers. — No person may operate, or cause to be operated, in this state any motor carrier subject to this article without first securing from the commis-
sioner an identification marker for each such motor carrier, except as provided in subsection (b) or (c) of this section. Each identification marker for a particular motor carrier shall bear a number. This identification marker shall be displayed on the driver's side of the motor carrier as required by the commissioner. The commissioner, after issuance of any identification marker to a motor carrier, shall cause an internal cross-check to be made in his office as to any state tax which he administers, to aid in determination of any noncompliance in respect to failure to file returns or payment of tax liabilities. The identification markers herein provided for shall be valid for the period of one year, ending December thirty-first of each year. A fee of five dollars shall be paid to the commissioner for issuing each identification marker which is reasonably related to the commissioner's costs of issuing such identification. All tax or reports due under this article shall be paid or reports filed before the issuance of a new identification marker. Failure by a taxpayer to file the returns or pay the taxes imposed by this article shall give cause to the commissioner to revoke or refuse to renew the identification marker previously issued.

(b) *Trip permit.* — A motor carrier that does not have a motor carrier identification marker issued under subsection (a) of this section may obtain a trip permit which authorizes the motor carrier specified therein to be operated in this state without an identification marker for a period of not more than ten consecutive days beginning and ending on the dates specified on the face of the permit. The fee for this permit shall be twenty-four dollars.

(1) Fees for trip permits shall be in lieu of the tax otherwise due under this article on account of the vehicles specified in the permit operating in this state during the period of the permit, and no reports of mileage shall be required with respect to that vehicle.

(2) A trip permit shall be carried in the cab of the motor vehicle for which it was issued at all times while it is in this state.
(3) A trip permit may be obtained from the commissioner or from wire services authorized by the commissioner to issue such permits. The cost of the telegram or similar transmissions shall be the responsibility of the motor carrier requesting the trip permit.

(c) Transportation permit. — The commissioner is hereby authorized to grant, in his discretion, a special permit to a new motor vehicle dealer for use on new motor vehicles driven under their own power from the factory or distributing place of a manufacturer, or other dealer, to a place of business of the new vehicle dealer, or from the place of business of a new vehicle dealer to a place of business of another dealer, or when delivered from the place of business of the new vehicle dealer to the place of business of a purchaser to whom title passes on delivery. A transporter’s permit must be carried in the cab of the motor vehicle being transported. A person to whom a transporter’s permit is issued shall file the reports required by section five of this article and pay any tax due. The fee for such transporter’s permit shall be fifteen dollars and a transporter’s permit is valid for the fiscal year for which it is issued unless surrendered or revoked by the tax commissioner.

(d) Criminal penalty. — Any person, whether such person be the owner, licensee or lessee, or the employee, servant or agent thereof, who operates or causes to be operated in this state, a motor carrier in violation of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars; and each day such violation continues or reoccurs shall constitute a separate offense.

(e) Notwithstanding the provisions of section five-d, article ten of this chapter, the commissioner shall deliver to or receive from the commissioner of the division of motor vehicles and the commissioner of the public service commission, the information contained in the application filed by a motor carrier for a trip permit under this section, when the information is used to administer a combined trip permit registration program for motor carriers operating in this state, which program may be
administered by one agency or any combination of the three agencies, as embodied in a written agreement executed by the head of each agency participating in the program. Such agencies have authority to enter into such an agreement notwithstanding any provision of this code to the contrary; and the fee for such combined trip permit shall be twenty-four dollars, which shall be in lieu of the fee set forth in subsection (b) of this section.

CHAPTER 178

(H. B. 2258—By Mr. Speaker, Mr. Klaas, and Delegate Trump)
[By Request of the Executive]

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article two, chapter seventeen-b of said code by adding thereto two new sections, designated sections one-b and five-a; to amend and reenact sections five, seven, seven-b, seven-c and fifteen of said article; and to amend and reenact sections nine and twenty-three, article one, chapter seventeen-e of said code, all relating to testing for driver's licenses; requiring the commissioner of motor vehicles to report possible or suspected violations of law to the state police; transfer of driver's licensing examination functions from the state police to the division of motor vehicles; delegation of responsibilities; authorizing the division of motor vehicles to administer the examinations of all applicants for motor vehicle licenses, motorcycle licenses and commercial driver's licenses; transferring the motorcycle license examination fund to the division of motor vehicles; authorizing the commissioner of said division to administer the funds; and providing for retention of commercial drivers license fees by the division.

Be it enacted by the Legislature of West Virginia:
That section nine, article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections five, seven, seven-b, seven-c and fifteen, article two, chapter seventeen-b of said code be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections one-b and five-a; and that sections nine and twenty-three, article one, chapter seventeen-e of said code be amended and reenacted, all to read as follows:

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17B. Motor Vehicle Driver’s Licenses.

17E. Uniform Commercial Driver’s License Act.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.


(a) The commissioner shall observe, administer and enforce the provisions of this chapter and all laws the enforcement of which is now or hereafter vested in the department: Provided, That nothing in this chapter shall deprive the public service commission of West Virginia of any of the duties or powers now vested in it with regard to the regulation of motor vehicle carriers.

(b) The commissioner may adopt and enforce any rules that are necessary to carry out the provisions of this chapter and any other laws the enforcement and administration of which are vested in the department.

(c) The commissioner may adopt an official seal for the use of the department.

(d) The commissioner shall, in instances where division personnel become aware of a possible or suspected violation of law where enforcement jurisdiction would be that of the West Virginia state police, communicate the violation to the state police.
CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1b. Transfer of driver's licensing examination function.
§17B-2-5. Qualifications, issuance and fee for instruction permits.
§17B-2-5a. Training, certification and monitoring of license examiners.
§17B-2-7. Examination of applicants.
§17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle.
§17B-2-7c. Motorcycle license examination fund.

§17B-2-1b. Transfer of driver's licensing examination function.

(a) Effective the first day of July, one thousand nine hundred ninety-nine, the responsibility for driver's licensing examinations and civilian employees of the West Virginia state police whose primary governmental duties as of the thirtieth day of June, one thousand nine hundred ninety-nine, involve the examination of applicants for instruction permits and driver's licenses shall be transferred from the West Virginia state police to the division of motor vehicles.

(b) Effective the first day of July, one thousand nine hundred ninety-nine, until the thirty-first day of December, two thousand, the commissioner of motor vehicles may delegate responsibility for the supervision of the civilian employees and the operation of the examination program to the superintendent of the West Virginia state police pending the orderly transfer and hiring of the necessary personnel, transfer and purchase of necessary equipment and supplies and the establishment of suitable examination locations. The commissioner may also reimburse the West Virginia state police for the services of personnel, equipment, supplies and office space at state police facilities necessary to maintain the examination program at its current level of service during the transfer period. The commissioner may also utilize existing state police locations as examination and licensing locations unless in his or her opinion, more suitable locations are available. The commissioner shall reimburse the West Virginia state police for that use.
§17B-2-5. Qualifications, issuance and fee for instruction permits.

(a) Any person who is at least fifteen years of age may apply to the division for an instruction permit. The division may, in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test and presented documentation of compliance with the provisions of section eleven, article eight, chapter eighteen of this code, issue to the applicant an instruction permit which entitles the applicant while having the permit in his or her immediate possession to drive a motor vehicle upon the public highways when accompanied by a licensed driver of at least twenty-one years of age, a driver’s education or driving school instructor that is acting in an official capacity as an instructor, or a certified division license examiner acting in an official capacity as an examiner, who is occupying a seat beside the driver, except in the event the permittee is operating a motorcycle. In no event may the permittee operate a motorcycle upon a public highway until reaching sixteen years of age.

Any instruction permit issued to a person under the age of sixteen years expires sixty days after the permittee reaches sixteen years of age: Provided, That only permittees who have reached their sixteenth birthday may take the driving examination as provided in section six of this article. The instruction permit may be renewed for one additional period of sixty days. Any permit issued to a person who has reached the age of sixteen years is valid for a period of sixty days and may be renewed for an additional period of sixty days or a new permit issued. The fee for the instruction permit is four dollars, one dollar of which shall be paid into the state treasury and credited to the state road fund, and the other three dollars of which shall be paid into the state treasury and credited to the general fund to be appropriated to the state police for application in the enforcement of the road law.

(b) Any person sixteen years of age or older may apply to the division for a motorcycle instruction permit. The division may, in its discretion, after the applicant has successfully passed all parts of the motorcycle examination other than the
driving test, and presented documentation of compliance with the provisions of section eleven, article eight, chapter eighteen of this code, issue to the applicant an instruction permit which entitles the applicant while having the permit in his or her immediate possession to drive a motorcycle upon the public streets or highways for a period of ninety days, during the daylight hours between sunrise and sunset only. No holder of a motorcycle instruction permit shall operate a motorcycle while carrying any passenger on the vehicle.

A motorcycle instruction permit is not renewable, but a qualified applicant may apply for a new permit. The fee for a motorcycle instruction permit is five dollars, which shall be paid into a special fund in the state treasury known as the motorcycle license examination fund as established in section seven-c, article two of this chapter.

§17B-2-5a. Training, certification and monitoring of license examiners.

The commissioner shall train, certify and monitor those employees of the division of motor vehicles designated by the commissioner as license examiners regarding the administration of licensing application and testing procedures for the purpose of ensuring compliance with statutory and regulatory requirements.

§17B-2-7. Examination of applicants.

(a) Upon the presentment by the applicant under the age of eighteen years of the applicant’s birth certificate, or a certified copy of the birth certificate, as evidence that the applicant is of lawful age, the division of motor vehicles shall examine every applicant for a license to operate a motor vehicle in this state, except as otherwise provided in this section. The examination shall include a test of the applicant’s eyesight, the applicant’s ability to read and understand highway signs regulating, warning, and directing traffic, the applicant’s knowledge of the traffic laws of this state, and the applicant’s knowledge of the effects of alcohol upon persons and the dangers of driving a motor vehicle under the influence of alcohol. The examination
shall also include an actual demonstration of ability to exercise
ordinary and reasonable control in the operation of a motor
vehicle, and any further physical and mental examination as the
division of motor vehicles considers necessary to determine the
applicant’s fitness to operate a motor vehicle safely upon the
highways.

(b) The commissioner shall propose legislative rules for
promulgation in accordance with the provisions of article three,
chapter twenty-nine-a of this code concerning the examination
of applicants for licenses and the qualifications required of
applicants, and the examination of applicants by the division
shall be in accordance with the rules. The rules shall provide for
the viewing of educational material or films on the medical,
biological, and psychological effects of alcohol upon persons,
the dangers of driving a motor vehicle while under the influence
of alcohol and the criminal penalties and administrative
sanctions for alcohol and drug related motor vehicle violations.

(c) After successful completion of the examination required
by this section or section seven-b of this article, and prior to the
issuance of a license pursuant to the provisions of section eight
of this article, every applicant for a driver’s license, junior
driver’s license or motorcycle-only license shall attend a
mandatory education class on the dangers and social conse-
quences of driving a motor vehicle while under the influence of
alcohol. To the extent practicable, the commissioner shall
utilize as lecturers at those classes persons who can relate
first-hand experiences as victims or family members of victims
of alcohol-related accidents or drivers who have been involved
in alcohol-related accidents which caused serious bodily injury
or death.

§17B-2-7b. Separate examination and endorsement for a license
valid for operation of motorcycle.

The state police shall administer a separate motorcycle
examination for applicants for a license valid for operation of
a motorcycle. On and after the first day of July, two thousand,
the division of motor vehicles shall administer the examination
provided for in this section. Any applicant for a license valid for
operation of a motorcycle shall be required to successfully complete the motorcycle examination, which is in addition to the examination administered pursuant to section seven of this article: Provided, That the commissioner may exempt an applicant for a motorcycle driver license or endorsement from all or part of the motorcycle license examination as provided in section six, article one-d of this chapter. The motorcycle examination shall test the applicant's knowledge of the operation of a motorcycle and of any traffic laws specifically relating to the operation of a motorcycle and shall include an actual demonstration of the ability to exercise ordinary and reasonable control in the operation of a motorcycle. An applicant for a license valid for the operation of only a motorcycle shall be tested as provided in this section and in section seven of this article, but need not demonstrate actual driving ability in any vehicle other than a motorcycle. The examination provided in this section shall not be made a condition upon the renewal of the license of any person under this section.

For an applicant who successfully completes the motorcycle examination, upon payment of the required fee, the division shall issue a motorcycle endorsement on the driver's license of the applicant, or shall issue a special motorcycle-only license if the applicant does not possess a driver's license.

Every person, including those holding a valid driver's license, is required to take the examination specified in this section to obtain a motorcycle license or endorsement.

§17B-2-7c. Motorcycle license examination fund.

There is hereby created a special revolving fund in the state treasury which shall be designated as the "motorcycle license examination fund". The fund shall consist of all moneys received from fees collected for motorcycle instruction permits under this article and any other moneys specifically allocated to the fund. The fund shall not be treated by the auditor or treasurer as part of the general revenue of the state. The fund shall be used and paid out upon order of the West Virginia state police solely for the purposes specified in this article. On the thirtieth day of June, two thousand, the special revolving fund
created in this section shall be established under the division of motor vehicles and shall be paid out upon order of the commis- sioner. Any unexpended balance remaining in the special revolving fund on the thirtieth day of June, two thousand, shall be transferred to the fund established under the division of motor vehicles.

The fund shall be used by the division to defray the costs of implementing and administering a special motorcycle license examination, including a motorcycle driving test.


The commissioner may propose legislative rules for promulgation that are necessary to carry out the examination, license and endorsement provisions of this chapter and the provisions regarding motor vehicle registration in accordance with the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.


§17E-1-23. Funding for the commercial driver's license fees.


(a) (1) General. — No person may be issued a commercial driver's license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 C.F.R. part 383, sub-parts G and H, and has satisfied all other requirements of the Federal Commercial Motor Vehicle Safety Act in addition to other requirements imposed by state law or federal regulations. The tests will be administered by the West Virginia state police according to rules promulgated by the commis- sioner. After the thirtieth day of June, two thousand, the tests will be administered by the division of motor vehicles.
(2) Third party testing. — The commissioner may authorize a person, including an agency of this or another state, an employer, private individual or institution, department, agency or instrumentality of local government, to administer the skills test specified by this section: Provided, That: (i) The test is the same which would otherwise be administered by the state; and (ii) the party has entered into an agreement with the state which complies with the requirements of 49 C.F.R. part 383.75.

(3) Indemnification of driver examiners. — No person who has been officially trained and certified by the state as a driver examiner, who administers a driving test, and no other person, firm or corporation by whom or with which that person is employed or is in any way associated, may be criminally liable for the administration of the tests, or civilly liable in damages to the person tested or other persons or property unless for gross negligence or willful or wanton injury.

(4) The West Virginia state police shall monitor third party testing according to rules promulgated by the commissioner. After the thirtieth day of June, two thousand, the division shall monitor third party testing.

(b) Waiver of skills test. — The commissioner may waive the skills test specified in this section for a commercial driver license applicant who meets the requirements of 49 C.F.R. part 383.77 and those requirements specified by the commissioner.

(c) Limitations on issuance of license. — A commercial driver’s license or commercial driver’s instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person’s driver’s license is suspended, revoked or canceled in any state; nor may a commercial driver’s license be issued by any other state unless the person first surrenders all such licenses to the department, which must be returned to the issuing state(s) for cancellation. The division shall issue a restricted commercial driver’s license to a person who has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings,
if a circuit court orders restrictions of the person’s license as provided in article five-a, chapter forty-eight-a of this code.

(d) Commercial driver’s instruction permit. — (1) A commercial driver’s instruction permit may be issued to an individual who holds a valid operator or Class “D” driver license who has passed the vision and written tests required for issuance of a commercial driver license. (2) The commercial instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period. The holder of a commercial driver’s instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction or testing. (3) A commercial driver’s instruction permit may only be issued to an individual who is at least eighteen years of age and has held an operator’s or junior operator’s license for at least two years. (4) The applicant for a commercial driver’s instruction permit shall also be otherwise qualified to hold a commercial driver’s license.

§17E-1-23. Funding for the commercial driver’s license fees.

Each application for a commercial driver’s license shall be accompanied by the fees provided for in this section and the fees shall be deposited in a special revolving fund for the operation by the division of its functions established by this chapter.

The fee for a commercial driver’s license shall be established by the commissioner to cover all necessary costs for program administration. The fees for knowledge and road testing shall also be established by the commissioner to cover all program costs projected to be incurred by the division and the West Virginia state police. The commissioner shall transfer into a special revolving fund under the control of the superintendent of the West Virginia state police those amounts required by the West Virginia state police and determined by the commissioner as necessary to administer its responsibilities under this article until the first day of July, two thousand.
AN ACT to amend and reenact section ten, article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the commissioner of motor vehicles to enter into reciprocal driver’s license agreements with other nations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.


1 The motor vehicle commissioner in cooperation with the state auditor, state road commissioner, the public service commission and the superintendent of state police as appropriate may enter into reciprocal agreements as he may deem proper or expedient with the proper authorities of other states, jurisdictions or nations, regulating the licensing of drivers and the use, on the roads and highways of this state, of trucks, automobiles and any other vehicles owned and duly licensed in other states, jurisdictions or nations. The commissioner may enter into reciprocal agreements under which the registration of vehicles owned in this state, and the licenses of drivers residing in this state shall be recognized by other states, jurisdictions or other nations.
AN ACT to amend and reenact section one, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article nine of said chapter; to amend and reenact sections one and nine, article two, chapter seventeen-b of said code; to amend and reenact sections four, four-a, four-b and six, article three, chapter seventeen-c of said code; to amend and reenact sections three-a and five, article six of said chapter; to amend and reenact sections one, two, three, five, six, seven, eight, nine, eleven and twelve, article seven of said chapter; to amend and reenact sections two, three, four, six and eight, article eight of said chapter; to amend article nine of said chapter by adding thereto a new section, designated section six; to amend article ten of said chapter by adding thereto a new section, designated section seven; to amend and reenact section six, article twelve of said chapter; to amend and reenact sections one, three and four, article thirteen of said chapter; to amend and reenact sections one, two, four, five, six, seven, eight, nine, ten and thirteen, article fourteen of said chapter; to amend and reenact section thirty-six-a, article fifteen of said chapter; to amend said article by adding thereto a new section, designated section six; to amend and reenact sections four and nine, article two-a, chapter seventeen-d of said code; to amend and reenact section thirty-one, article two, chapter twenty of said code; to amend and reenact section twenty-six, article seven of said chapter; to amend and reenact section nine, article six, chapter sixty of said code; and to amend and reenact section thirty-nine-a, article three, chapter sixty-one of said code, all relating to eliminating the jail penalty for certain offenses; eliminating the jail penalty for first convictions of driving or moving or for allowing one’s motor vehicle to be
driven or moved when such motor vehicle is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid; eliminating the jail penalty for first convictions of operating a motor vehicle without evidence of registration; eliminating the jail penalty for first convictions of driving a motor vehicle without obtaining a valid driver's license; eliminating the jail penalty for driving a motor vehicle without possessing a driver's license for immediate display; eliminating the jail penalty for failing to obey instructions of official traffic control devices; eliminating the jail penalty for failing to obey law-enforcement officers or persons authorized by the commissioner of highways or by proper local authorities to operate traffic control devices; eliminating the jail penalty for exceeding the posted speed restriction or traffic restriction at a construction site; eliminating the jail penalty for violating the pedestrian walk and wait signals; eliminating the jail penalty for violating the minimum speed limit; eliminating the jail penalty for violating special speed limitations; eliminating the jail penalty for violating the restrictions on driving on the right side of the roadway; eliminating the jail penalty for violating the restrictions on passing vehicles proceeding in the opposite direction; eliminating the jail penalty for violating the restrictions on overtaking passing vehicles proceeding in the same direction; eliminating the jail penalty for violating the restrictions on overtaking on the left; eliminating the jail penalty for violating the restrictions on driving to the left of the center of the roadway; eliminating the jail penalty for violating the restrictions on no-passing zones; eliminating the jail penalty for violating the restrictions on one-way roadways and rotary traffic islands; eliminating the jail penalty for violating the restrictions on driving on roadways laned for traffic; eliminating the jail penalty for violating the restrictions on driving on divided highways; eliminating the jail penalty for driving onto or from controlled-access roadways; eliminating the jail penalty for violating the restrictions on making right turns; eliminating the jail penalty for violating the restrictions on making left turns; eliminating the jail penalty for violating the restrictions on turning on a curve or the crest of a grade; eliminating the jail penalty for
violating the restrictions on turning movements and required signals; eliminating the jail penalty for violating the provisions outlining the right-of-way; eliminating the jail penalty for violating the provisions outlining the pedestrians’ rights and duties; eliminating the jail penalty for stopping before emerging from an alley or private driveway; eliminating the jail penalty for violating the restrictions on stopping, standing or parking outside a business or residence district; eliminating the jail penalty for stopping, standing or parking in specified places; eliminating the jail penalty for violating restrictions on parking; eliminating the jail penalty for violating the restrictions on leaving a motor vehicle unattended; eliminating the jail penalty for violating the limitations on backing; eliminating the jail penalty for violating the restrictions on obstruction of the driver’s view or driving mechanisms; eliminating the jail penalty for violating the restrictions on passengers in the seat with the driver; eliminating the jail penalty for violating the restrictions on passengers on the running board; eliminating the jail penalty for violating the restrictions on driving on mountain highways; eliminating the jail penalty for violating the restrictions on coasting; eliminating the jail penalty for violating the restrictions on following authorized emergency vehicles; eliminating the jail penalty for violating the restrictions on crossing fire hoses; eliminating the jail penalty for violating the restrictions on parking on private property; eliminating the jail penalty on violating the restrictions on necessary equipment on motor vehicles; eliminating the jail penalty on violating the restrictions on sun screening devices; eliminating the jail penalty on first convictions for the failure to carry and furnish proof of insurance; eliminating the jail penalty for first convictions of altering, mutilating or defacing any department of natural resources license, tag or permit, or the entries thereon; eliminating the jail penalty for second convictions for littering; eliminating the jail penalty for first convictions of being intoxicated in public; eliminating the jail penalty for first convictions of drinking alcohol in public; eliminating the jail penalty for first convictions of tendering alcohol to another person in public or possessing alcohol in amounts in excess of ten gallons without the proper authorization; and eliminating the jail penalty for first and second convictions of making a worthless check.
Be it enacted by the Legislature of West Virginia:

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

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title and Antitheft Provisions.

17B. Motor Vehicle Driver's Licenses.

17C. Traffic Regulations and Laws of the Road.

17D. Motor Vehicle Safety Responsibility Law.

20. Natural Resources.

60. State Control of Alcoholic Liquors.

61. Crimes and Their Punishment.
CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE AND ANTITHEFT PROVISIONS.

Article 3. Original and Renewal of Registration; Issuance of Certificate of Title.

§17A-3-1. Misdemeanor to violate provisions of article; penalty.

(a) It is unlawful for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered under this article which is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid when and as required under this article, except as otherwise permitted by the provisions of this chapter: Provided, That in the event of the sale of a vehicle by a person other than a registered dealer, the person purchasing the same may, for a period of not more than ten days, operate such vehicle under the registration of its previous owner and display the registration thereof: Provided, however, That he or she shall have and display on the demand of any proper officer the consent in writing of such previous owner so to use such registration.

(b) Unless otherwise provided for in this article, any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction thereof, shall be fined not more than five hundred dollars, or confined in the county or regional jail not more than six months, or both.

ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION OR REVOCATION OF REGISTRATION.

§17A-9-2. Operation of vehicles without evidences of registration; use of temporary facsimile; penalty.
(a) No person shall operate, nor shall an owner knowingly permit to be operated, upon any highway any vehicle required to be registered under this article unless there shall be attached thereto and displayed thereon or shall be in the possession of the operator when and as required by this chapter a valid registration card and registration plate or plates issued therefor by the department for the current registration year, except as otherwise expressly permitted in this chapter.

(b) In the event that the registration plate or plates originally issued are lost, destroyed or stolen, a temporary facsimile of the plate or plates, showing the number of the same, may be attached to the vehicle by the owner for a period of not more than fifteen days, or until a new plate or plates are issued by the department, whichever is earlier: Provided, That no such facsimile shall be used and no such vehicle shall be driven upon the highways of this state, until the owner shall have notified in writing the West Virginia state police of the loss of such registration plate or plates.

(c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction thereof, shall be fined not more than five hundred dollars, or confined in the county or regional jail not more than six months, or both.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards; penalty.

§17B-2-9. License to be carried and exhibited on demand; penalty.

*§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards; penalty.

(a) No person, except those hereinafter expressly exempted, may drive any motor vehicle upon a street or highway in this state, except as otherwise expressly permitted in this chapter.
state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of such subdivision street is generally used by the public unless the person has a valid driver's license under the provisions of this code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided in this code may exercise the privilege thereby granted as provided in this code and, except as otherwise provided by law, shall not be required to obtain any other license to exercise such privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver's license, shall indicate on the license the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with the provisions of this code, federal law or rule.

(c) Driver's licenses issued by the division shall be classified in the following manner:

(1) Class A, B or C license shall be issued to those persons eighteen years of age or older with two years driving experience and who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal Commercial Motor Vehicle Safety Act of 1986, Title XII of public law 99870 and subsequent rules, and have paid the required fee.

(2) Class D license shall be issued to those persons eighteen years and older with one year driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purposes of the regulation of the operation of a motor vehicle, wherever the term chauffeur's license is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: Provided, That anyone who
is not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle which is registered or which is required to be registered as a Class A motor vehicle as that term is defined in section three, article ten, chapter seventeen-a of this code with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) Class E license shall be issued to those persons who have qualified under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation.

(4) Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided for by this chapter and have paid the required fee, but who do not possess a Class A, B, C and D or E driver’s license.

(d) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of such subdivision street is generally used by the public unless the person has a valid motorcycle license or a valid license which has been endorsed under section seven-b of this article for motorcycle operation or has a valid motorcycle instruction permit.

(e) (1) A nonoperator identification card may be issued to any person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) Does not have a valid driver’s license;

(C) Has reached the age of sixteen years;

(D) Has paid the required fee of ten dollars: Provided, That such fee is not required if the applicant is sixty-five years or older or is legally blind; and
(E) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The nondriver identification card shall contain the same information as a driver's license except that such identification card shall be clearly marked as identification card. The identification card shall expire every four years. It may be renewed on application and payment of the fee required by this section.

(A) After the thirtieth day of June, one thousand nine hundred ninety-six, every identification card issued to persons who have attained their twenty-first birthday shall expire on the last day of the month in which the applicant's birthday occurs in those years in which the applicant's age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years nor more than seven years and such identification card shall be renewed in the month in which the applicant's birthday occurs and shall be valid for a period of five years expiring in the month in which the applicant's birthday occurs and in a year in which the applicant's age is evenly divisible by five.

(B) Every identification card issued to persons who have not attained their twenty-first birthday shall expire on the last day of the month in the year in which the applicant attains the age of twenty-one years.

(3) The identification card shall be surrendered to the division when the holder is issued a driver's license. The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(f) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction, shall be fined not more than five hundred dollars, or confined in the county or regional jail not more than six months, or both.
§17B-2-9. License to be carried and exhibited on demand; penalty.

1 (a) Every licensee shall have his or her driver's license in such person's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a magistrate, municipal judge, circuit court judge, peace officer, or an employee of the division.

2 (b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars: Provided, That no person charged with violating this section shall be convicted if such person produces in court or at the office of the arresting officer a driver's license issued to such person and valid at the time of such person's arrest.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

Article
3. Traffic Signs, Signals and Markings.
6. Speed Restrictions.
8. Turning and Starting and Signals on Stopping and Turning.
12. Special Stops Required.
15. Equipment.

ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS.

§17C-3-4. Obedience to traffic-control devices; official signs to be in proper position, etc; penalty.

§17C-3-4a. Obedience to traffic-control instructions at site of street or highway construction or maintenance; penalty.

§17C-3-4b. Traffic violations in construction zones; posting requirement; criminal penalty.

§17C-3-6. Pedestrian walk and wait signals; penalty.

§17C-3-4. Obedience to traffic-control devices; official signs to be in proper position, etc; penalty.
(a) The driver of any vehicle and the operator of any
streetcar shall obey the instructions of any official traffic-
control device applicable thereto placed in accordance with the
provisions of this chapter, unless otherwise directed by a traffic
or police officer, subject to the exceptions granted the driver of
an authorized emergency vehicle in this chapter.

(b) Any person violating the provisions of this section is
guilty of a misdemeanor and, upon conviction thereof, shall be
fined not more than one hundred dollars; upon a second
conviction within one year thereafter, shall be fined not more
than two hundred dollars; and upon a third or subsequent
conviction, shall be fined not more than five hundred dollars.

(c) No provision of this chapter for which signs are required
shall be enforced against an alleged violator if at the time and
place of the alleged violation an official sign is not in proper
position and sufficiently legible to be seen by an ordinarily
observant person. Whenever a particular section does not state
that signs are required, such section shall be effective even
though no signs are erected or in place.

§17C-3-4a. Obedience to traffic-control instructions at site of
street or highway construction or maintenance; penalty.

(a) The driver of any vehicle shall obey the traffic-control
instructions of any law-enforcement officer or persons autho-
rized by the commissioner of highways or by proper local
authorities to operate traffic-control devices, act as flagmen or
operate authorized vehicles engaged in work at or near the site
of street or highway construction maintenance work, for the
purpose of regulating, warning or guiding traffic, subject to the
exceptions granted the driver of an authorized emergency
vehicle in this chapter.

(b) Any person failing to comply with the requirements of
this section is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not more than one hundred dollars; upon
a second conviction within one year thereafter, shall be fined
not more than two hundred dollars; and upon a third or subse-
quent conviction, shall be fined not more than five hundred dollars.

*§17C-3-4b. Traffic violations in construction zones; posting requirement; criminal penalty.

(a) At each and every location where street or highway construction work is to be conducted a sign shall be posted at least one thousand feet from the construction site, or as close to one thousand feet from the construction site as is practicable given the location of the site when workers are present, notifying all motorists as to the speed limit and displaying the words “construction work”.

(b) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars.

(c) Nothing in this section shall be construed to preclude prosecution of any operator of a motor vehicle who commits a violation of any other provision of this code for such violation.

§17C-3-6. Pedestrian walk and wait signals; penalty.

(a) Whenever special pedestrian-control signals exhibiting the words “Walk” or “Wait” are in place such signals shall indicate as follows:

(1) Walk. — Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) Wait. — No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his or her crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction of traffic violation in a construction zone, the fine shall be increased to not more than five hundred dollars.

* Clerk's Note: This section was also amended by HB 2294 (Chapter 285), which passed subsequent to this act.
15 conviction within one year thereafter, shall be fined not more
16 than two hundred dollars; and upon a third or subsequent
17 conviction, shall be fined not more than five hundred dollars.

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-3a. Minimum speed regulations; penalty.

§17C-6-5. Special speed limitations; penalty.

§17C-6-3a. Minimum speed regulations; penalty.

1 (a) No person shall drive a motor vehicle at such a slow
2 speed as to impede the normal and reasonable movement of
3 traffic except when reduced speed is necessary for safe opera-
4 tion or in compliance with law.

5 (b) Whenever the commissioner or local authorities within
6 their respective jurisdiction determine on the basis of an
7 engineering and traffic investigation that slow speeds on any
8 part of the highway consistently impede the normal and
9 reasonable movement of traffic, the commissioner or such local
10 authority may determine and declare a minimum speed limit
11 below which no person shall drive a vehicle except when
12 necessary for safe operation or in compliance with law.

13 (c) Any person who violates the provisions of this section
14 is guilty of a misdemeanor and, upon conviction thereof, shall
15 be fined not more than one hundred dollars; upon a second
16 conviction within one year thereafter, shall be fined not more
17 than two hundred dollars; and upon a third or subsequent
18 conviction within two years thereafter, shall be fined not more
19 than five hundred dollars.

§17C-6-5. Special speed limitations; penalty.

1 (a) No person shall drive any vehicle equipped with other
2 than pneumatic tires at a speed greater than a maximum of ten
3 miles per hour.

4 (b) No person shall drive a vehicle over any bridge or other
5 elevated structure constituting a part of a highway at a speed
6 which is greater than the maximum speed which can be
7 maintained with safety to such bridge or structure, when such
8 structure is signposted as provided in this section.
(c) The commissioner of highways upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this chapter, the commissioner shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of one hundred feet before each end of such structure.

(d) Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by said commissioner and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

(e) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

ARTICLE 7. DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND PASSING, ETC.

§17C-7-1. Driving on right side of roadway; exceptions; penalty.
§17C-7-2. Passing vehicles proceeding in opposite directions; penalty.
§17C-7-3. Overtaking and passing vehicle proceeding in same direction—Passing on the left generally; penalty.
§17C-7-5. Same—Limitations on overtaking on the left; penalty.
§17C-7-6. Same—Further limitations on driving to left of center of roadway; penalty.
§17C-7-7. Same—No-passing zones; penalty.
§17C-7-8. One-way roadways and rotary traffic islands; penalty.
§17C-7-9. Driving on roadways laned for traffic; penalty.
§17C-7-11. Driving on divided highways; penalty.
§17C-7-12. Controlled-access roadway—Driving onto or from; penalty.

§17C-7-1. Driving on right side of roadway; exceptions; penalty.
(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When the right half of a roadway is closed to traffic while under construction or repair;

(3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-7-2. Passing vehicles proceeding in opposite directions; penalty.

(a) Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one half of the main-traveled portion of the roadway as nearly as possible.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be
fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-7-3. Overtaking and passing vehicle proceeding in same direction — Passing on the left generally; penalty.

(a) The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to these limitations, exceptions, and special rules hereinafter stated.

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an audible signal and pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-7-5. Same — Limitations on overtaking on the left; penalty.

(a) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the
right-hand side of the roadway before coming within one hundred feet of any vehicle approaching from the opposite direction.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-7-6. Same — Further limitations on driving to left of center of roadway; penalty.

(a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

(1) When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(2) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing;

(3) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct, or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway.

(c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-7-7. Same — No-passing zones; penalty.

(a) The commissioner of highways is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on
the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-7-8. One-way roadways and rotary traffic islands; penalty.

(a) The commissioner of highways may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

(b) Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

(c) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

(d) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-7-9. Driving on roadways laned for traffic; penalty.

(a) Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes a
vehicle shall not be driven in the center lane which is clearly
marked as a left turn lane except in preparation for a left turn or
where such center lane is at the time allocated exclusively to
traffic moving in the direction the vehicle is proceeding and is
signposted to give notice of such allocation.

(3) Official signs may be erected directing slow-moving
traffic to use a designated lane or designating those lanes to be
used by traffic moving in a particular direction regardless of the
center of the roadway and drivers of vehicles shall obey the
directions of every such sign.

(b) Any person violating the provisions of this section is
guilty of a misdemeanor and, upon conviction thereof, shall be
fined not more than one hundred dollars; upon a second
conviction within one year thereafter, shall be fined not more
than two hundred dollars; and upon a third or subsequent
conviction, shall be fined not more than five hundred dollars.

§17C-7-11. Driving on divided highways; penalty.

(a) Whenever any highway has been divided into two
roadways by leaving an intervening space or by a physical
barrier or clearly indicated dividing section so constructed as to
impede vehicular traffic, every vehicle shall be driven only
upon the right-hand roadway and no vehicle shall be driven
over, across, or within any such dividing space, barrier, or
section, except through an opening in such physical barrier or
dividing section or space or at a crossover or intersection
established by public authority.

(b) Any person violating the provisions of this section is
guilty of a misdemeanor and, upon conviction thereof, shall be
fined not more than one hundred dollars; upon a second
conviction within one year thereafter, shall be fined not more
than two hundred dollars; and upon a third or subsequent
conviction, shall be fined not more than five hundred dollars.

§17C-7-12. Controlled-access roadway — Driving onto or from;
penalty.
(a) No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

ARTICLE 8. TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING.

§17C-8-2. Right turns; penalty.
§17C-8-3. Left turns on two-way roadways; penalty.
§17C-8-4. Left turns on other than two-way roadways; penalty.
§17C-8-6. Turning on curve or crest of grade prohibited; penalty.
§17C-8-8. Turning movements and required signals; penalty.

§17C-8-2. Right turns; penalty.

1 (a) Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

2 (b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-8-3. Left turns on two-way roadways; penalty.

1 (a) At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left
(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-8-4. Left turns on other than two-way roadways; penalty.

(a) At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-8-6. Turning on curve or crest of grade prohibited; penalty.

(a) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent
§17C-8-8. Turning movements and required signals; penalty.

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in sections two, three, four or five of this article, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(d) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

ARTICLE 9. RIGHT-OF-WAY.

§17C-9-6. Misdemeanor to violate provisions of article; penalty.

Any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

ARTICLE 10. PEDESTRIANS’ RIGHTS AND DUTIES.
§17C-10-7. Penalty for pedestrians violating the provisions of this article.

Any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-6. Stopping before emerging from alley or private driveway; penalty.

(a) The driver of a vehicle within a business or residence district emerging from any alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or private driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-1. Stopping, standing or parking outside of business or residence districts; penalty.

§17C-13-3. Stopping, standing or parking prohibited in specified places; penalty.

§17C-13-4. Right and left parallel parking; angle parking; highway signs restricting parking, etc; penalty.

§17C-13-1. Stopping, standing or parking outside of business or residence districts; penalty.

(a) Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-
traveled part of the highway when it is practicable to stop, park, or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet in each direction upon such highway.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

(c) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

§17C-13-3. Stopping, standing or parking prohibited in specified places; penalty.

(a) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

1. (1) On a sidewalk;
2. (2) In front of a public or private driveway;
3. (3) Within an intersection;
4. (4) Within fifteen feet of a fire hydrant;
5. (5) In a properly designated fire lane;
6. (6) On a crosswalk;
7. (7) Within twenty feet of a crosswalk at an intersection;
(8) Within thirty feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;

(9) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

(10) Within fifty feet of the nearest rail of a railroad crossing;

(11) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of the entrance (when properly signposted);

(12) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

(13) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(14) On any bridge or other elevated structure on a highway or within a highway tunnel;

(15) At any place where official signs prohibit stopping;

(16) Within twenty feet of any mail receptacle served regularly by a carrier using a motor vehicle for daily deliveries, if the parking interferes with or causes delay in the carrier's schedule;

(17) On any controlled-access highway;

(18) At any place on any highway where the safety and convenience of the traveling public is thereby endangered;

(19) In front of a wheelchair accessible ramp or curb cut which is part of a sidewalk designed for use by the general public when the ramp or curb cut is properly marked with yellow paint.
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(b) No person shall move a vehicle not lawfully under his or her control into any prohibited area or away from a curb such distance as is unlawful.

(c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-13-4. Right and left parallel parking; angle parking; highway signs restricting parking, etc.; penalty.

(a) Except as otherwise provided in this section, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

(b) Local authorities may by ordinance permit parking of vehicles with the left-hand wheels adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.

(c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the division of highways has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The division of highways with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on any highway where in its opinion, as evidenced by resolution or order
entered in its minutes, such stopping, standing, or parking is
dangerous to those using the highway or where the stopping,
standing, or parking of vehicles would unduly interfere with the
free movement of traffic thereon. Such signs shall be official
signs and no person shall stop, stand, or park any vehicle in
violation of the restrictions stated on such signs. Any person
violating the provisions of this subsection is guilty of a misde-
meanor and, upon conviction thereof, shall be fined not more
than one hundred dollars; upon a second conviction within one
year thereafter, shall be fined not more than two hundred
dollars; and upon a third or subsequent conviction, shall be
fined not more than five hundred dollars.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-1. Unattended motor vehicle; penalty.
§17C-14-2. Limitations on backing; penalty.
§17C-14-4. Obstruction to driver's view or driving mechanism; penalty.
§17C-14-5. Passengers in seat with operator; penalty.
§17C-14-6. Passengers on running board; penalty.
§17C-14-7. Driving on mountain highways; penalty.
§17C-14-8. Coasting prohibited; penalty.
§17C-14-9. Following authorized emergency vehicles; penalty.
§17C-14-10. Crossing fire hose; penalty.
§17C-14-13. Vehicles parked on private property; penalty.

§17C-14-1. Unattended motor vehicle; penalty.

(a) No person driving or in charge of a motor vehicle shall
permit it to stand unattended without first stopping the engine,
locking the ignition, removing the key, and effectively setting
the brake thereon and, when standing upon any grade, turning
the front wheels to the curb or side of the highway.
(b) Any person violating the provisions of this section is
guilty of a misdemeanor and, upon conviction thereof, shall be
fined not more than one hundred dollars; upon a second
conviction within one year thereafter, shall be fined not more
than two hundred dollars; and upon a third or subsequent
conviction, shall be fined not more than five hundred dollars.

§17C-14-2. Limitations on backing; penalty.
(a) The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-4. Obstruction to driver's view or driving mechanism; penalty.

(a) No person shall drive a vehicle when it is so loaded as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle or streetcar shall ride in such position as to interfere with the driver's or operator's view ahead or to the sides, or to interfere with his or her control over the driving mechanism of the vehicle or streetcar.

(c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-5. Passengers in seat with operator; penalty.

(a) No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while said motor vehicle is being operated on the streets or highways of this state: Provided, That the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the division of motor vehicles.
§17C-14-6. Passengers on running board; penalty.

(a) No passenger shall ride nor shall the operator permit any passenger to ride on the running boards of any motor vehicle while such vehicle is being operated on the streets or highways of this state.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-7. Driving on mountain highways; penalty.

(a) The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible and, upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with the horn of such motor vehicle.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-8. Coasting prohibited; penalty.

(a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.
(b) The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

(c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-9. Following authorized emergency vehicles; penalty.

(a) The driver of any vehicle other than one on official business may not follow any authorized emergency vehicle traveling in response to a fire alarm or other emergency closer than five hundred feet or drive into or park such vehicle within the block where such authorized emergency vehicle has stopped in answer to a fire alarm or other emergency.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-10. Crossing fire hose; penalty.

(a) No streetcar or vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway, or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.
§17C-14-13. Vehicles parked on private property; penalty.

1 (a) It shall be unlawful for any driver of a vehicle to stop, park or leave standing unattended any vehicle on a private road or driveway or on private property without having express or implied permission from the owner, tenant or lessee of such land.

2 (b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

3 (c) The owner, tenant or lessee of such private road or driveway or private property may move, or have moved, any vehicle stopped, parked or left standing unattended on his or her private road, driveway, or private property as above prohibited without any liability for the cost of moving any vehicle, nor shall he or she be liable to the owner of the vehicle for any damage done to such vehicle in moving it, unless the owner, tenant or lessee of such private road or driveway or private property was negligent in removing or authorizing the removal of the vehicle. The owner of such vehicle shall be responsible to the persons removing such vehicle for paying all removal costs. Any person who removes any vehicle under the provisions of this section shall notify the West Virginia state police of such action, and, if such vehicle is removed within a municipality, shall, in addition notify the police department of such municipality.

ARTICLE 15. EQUIPMENT.

§17C-15-6. Penalty for violations of the provisions of this article.

§17C-15-36a. Sun screening devices; penalty.

§17C-15-6. Penalty for violations of the provisions of this article.

1 (a) Unless otherwise provided for in this article and, except as otherwise provided in subsection (b) of this section, any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
more than one hundred dollars; upon a second conviction within
one year thereafter, shall be fined not more than two hundred
dollars; and upon a third or subsequent conviction, shall be
fined not more than five hundred dollars.

(b) Any person violating the provisions of sections thirty-
one or thirty-two of this article is guilty of a misdemeanor and,
upon conviction thereof, shall be fined not more than one
dollar, or confined in the county or regional jail for
not more than ten days, or both; upon a second conviction
within one year thereafter, shall be fined not more than two
hundred dollars, or confined in the county or regional jail for
not more than twenty days, or both; and upon a third or subse-
quint conviction, shall be fined not more than five hundred
dollars, or confined in the county or regional jail not more than
six months, or both.

§17C-15-36a. Sun screening devices; penalty.

(a) No person may operate a motor vehicle that is registered
or required to be registered in the state on any public highway,
road or street that has a sun screening device on the windshield,
the front side wings and side windows adjacent to the right and
left of the driver and windows adjacent to the rear of the driver
that do not meet the requirements of this section.

(b) A sun screening device when used in conjunction with
the windshield must be nonreflective and may not be red,
yellow or amber in color. A sun screening device may be used
only along the top of the windshield and may not extend
downward beyond the ASI line or more than five inches from
the top of the windshield whichever is closer to the top of the
windshield.

(c) A sun screening device when used in conjunction with
the automotive safety glazing materials of the side wings or
side windows located at the immediate right and left of the
driver shall be a nonreflective type with reflectivity of not more
than twenty percent and have a light transmission of not less
than thirty-five percent. The side windows behind the driver
and the rear most windows may have a sun screening device
that is designed to be used on automotive safety glazing materials that has a light transmission of not less than thirty-five percent and a reflectivity of not more than twenty percent. If a sun screening device is used on glazing behind the driver, one right and one left outside rear view mirror is required.

(d) Each manufacturer shall:

(1) Certify to the West Virginia state police and division of motor vehicles that a sun screening device used by it is in compliance with the reflectivity and transmittance requirements of this section;

(2) Provide a label not to exceed one and one-half square inches in size, with a means for the permanent and legible installations between the sun screening material and each glazing surface to which it is applied that contains the manufacturer’s name and its percentage of light transmission; and

(3) Include instructions with the product or material for proper installation, including the affixing of the label specified in this section. The labeling or marking must be placed in the left lower corner of each glazing surface when facing the vehicle from the outside.

(e) No person may:

(1) Offer for sale or for use any sun screening product or material for motor vehicle use not in compliance with this section; or

(2) Install any sun screening product or material on vehicles intended for use on public roads without permanently affixing the label specified in this section.

(f) The provisions of this section do not apply to a motor vehicle registered in this state in the name of a person, or the person’s legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this state that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun screening material which would be of a light transmittance or luminous
reflectance in violation of this section. The affidavit must be in
the possession of the person so afflicted, or the person’s legal
guardian, at all times while being transported in the motor
vehicle.

(g) The light transmittance requirement of this section does
not apply to windows behind the driver on trucks, buses,
trailers, mobile homes and multipurpose passenger vehicles.

(h) As used in this section:

(1) “Bus” means a motor vehicle with motive power, except
a trailer, designed for carrying more than ten persons.

(2) “Light transmission” means the ratio of the amount of
total light to pass through a product or material to the amount
of the total light falling on the product or material.

(3) “Luminous reflectants” means the ratio of the amount
of total light that is reflected outward by the product or material
to the amount of the total light falling on the product or
materials.

(4) “Manufacturer” means any person engaged in the
manufacturing or assembling of sun screening products or
materials designed to be used in conjunction with vehicle
glazing materials for the purpose of reducing the effects of the
sun.

(5) “Motor homes” means vehicular units designed to
provide temporary living quarters built into and an integral part
of or permanently attached to a self-propelled motor vehicle
chassis.

(6) “Multipurpose passenger vehicle” means a motor
vehicle with motive power, except a trailer, designed to carry
ten persons or less which is constructed either on a truck chassis
or with special features for occasional off-road operation.

(7) “Nonreflective” means a product or material designed
to absorb light rather than to reflect it.

(8) “Passenger car” means a motor vehicle with motive
power, except a multipurpose passenger vehicle, motorcycle or
trailer, designed for carrying ten persons or less.
(9) "Sun screening device" means film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

(10) "Truck" means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.

(i) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred dollars.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.


(a) All insurance carriers transacting insurance in this state shall supply a certificate to the insured or to any person subject to the registration provisions of article three, chapter seventeen-a of this code, certifying that there is in effect a motor vehicle liability policy upon such motor vehicle in accordance with the provisions of article three, chapter seventeen-a of this code. The certificate shall give its effective date and the effective date of the policy and, unless the policy is issued to a person who is not the owner of a motor vehicle, must designate by explicit description, in such detail as the commissioner of the division of motor vehicles shall by rule require, all motor vehicles covered and all replacement vehicles of similar classification:

Provided, That on and after the first day of July, one thousand nine hundred eighty-four, insurance companies shall supply a certificate of insurance in duplicate for each policy term and for each vehicle included in a policy, except for those listed in a fleet policy. Each such certificate of insurance shall list the name of the policyholder and the name of the vehicle owner if different from the policyholder.

The certificate must specify for each vehicle listed therein, that there is a minimum liability insurance coverage not less
(b) The certificate provided pursuant to the provisions of this section or other proof of insurance shall be carried by the insured in the appropriate vehicle for use as proof of security, and must be presented at the time of vehicle inspection as required by article sixteen, chapter seventeen-c of this code. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than five thousand dollars; and upon a second or subsequent conviction, shall be fined not less than two hundred dollars nor more than five thousand dollars, or confined in the county or regional jail for not less than fifteen days nor more than one year, or both: Provided, That an insured shall not be guilty of a violation of this subsection (b) if he or she furnishes proof that such insurance was in effect within seven days of being cited for not carrying such certificate or other proof in such vehicle.

(c) As used in this section, proof of insurance means a certificate of insurance, an insurance policy, a mechanically reproduced copy of an insurance policy, a certificate of self-insurance, or a copy of the current registration issued to a motor carrier by the public service commission: (1) Through the single state registration system established pursuant to section fourteen, article six-a, chapter twenty-four-a of this code; or (2) pursuant to the provisions of section four, article six, chapter twenty-four-a of this code.


In addition to any administrative penalty provided for violation of any provision of this article, any person who violates any provision of this article for which another penalty is not provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than five thousand dollars, or confined in the county or regional jail not less than fifteen days nor more than one year, or both.
The arrest procedures authorized in section four, article nineteen, chapter seventeen-c of this code shall apply to the enforcement of the provisions of this article.

CHAPTER 20. NATURAL RESOURCES.

Article
2. Wildlife Resources.
7. Law Enforcement, Motorboating, Litter.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-31. Size and form of license and tag; contents; unlawful to alter licenses or permits; penalty.

(a) The size, content and form of all licenses, tags, and permits shall be prescribed by the director. The information which a licensee is required to furnish shall be placed upon the license by the license issuing authority before delivery of such license to the licensee.

(b) It shall be unlawful for any person to alter, mutilate, or deface any license, tag, or permit, or the entries thereon, for the purpose of evading the provisions of this chapter.

Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty dollars nor more than three hundred dollars; and upon a second and subsequent conviction thereof, shall be fined not less than twenty dollars nor more than three hundred dollars, or confined in the county or regional jail not less than ten nor more than one hundred days, or both.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-26. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

(a) (1) Any person who places, deposits, dumps or throws or causes to be placed, deposited, dumped or thrown any litter as defined in section twenty-four of this article, in or upon any public or private highway, road, street or alley, or upon any private property without the consent of the owner, or in or upon
6 any public park or other public property other than in such
place as may be set aside for such purpose by the governing
body having charge thereof, is guilty of a misdemeanor and,
upon his or her first conviction, shall be fined not less than fifty
dollars nor more than five hundred dollars: Provided, That a
person shall not be held responsible for the actions of animals
under their direct control. At the request of the defendant or in
the discretion of the court, the court may sentence the defendant
to pick up and remove from any public highway, road, street,
alley or any other public park or public property as designated
by the court, any and all litter, garbage, refuse, trash, cans,
bottles, papers, ashes, carcass of any dead animal or any part
thereof, offal or any other offensive or unsightly matter placed,
deposited, dumped or thrown contrary to the provisions of this
section by anyone prior to the date of such conviction. For the
first offense, the alternative sentence of litter pickup shall be
not less than eight hours nor more than sixteen hours in lieu of
a fine. For purposes of this subdivision, the term “court”
includes circuit, magistrate and municipal courts.

(2) Upon his or her second conviction, such person shall be
fined not less than two hundred fifty dollars nor more than one
thousand dollars: Provided, That a person shall not be held
responsible for the actions of animals under their direct control.
At the request of the defendant or in the discretion of the court,
the court may sentence the defendant to pick up and remove
from any public highway, road, street, alley or any other public
park or public property as designated by the court, any and all
litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass
of any dead animal or any part thereof, offal or any other
offensive or unsightly matter placed, deposited, dumped or
thrown contrary to the provisions of this section by anyone
prior to the date of such conviction. For the second offense, the
alternative sentence of litter pickup shall be not less than
sixteen hours nor more than thirty-two hours in lieu of a fine.
For purposes of this subdivision, the term “court” shall include
circuit and magistrate courts.

(3) Upon such person’s third and successive conviction, he
or she shall be fined not less than five hundred dollars nor more
than two thousand dollars and confined in the county or regional jail not less than forty-eight hours nor more than one year: Provided, That a person shall not be held responsible for the actions of animals under their direct control. At the request of the defendant or in the discretion of the court, the court may sentence the defendant to pick up and remove from any public highway, road, street, alley or any other public park or public property as designated by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. Upon a third conviction, the alternative sentence of litter pickup shall be not less than thirty-two hours nor more than sixty-four hours in lieu of such fine or incarceration, but not both. For purposes of this subdivision, the term "court" includes circuit and magistrate courts.

(4) The alternative sentence of litter pickup herein set forth shall be verified by the conservation officers from the division of natural resources or environmental inspectors from the division of environmental protection or a regional engineering technician from the division of environmental protection pollution prevention and open dumps program (PPOD) of the county in which the offense occurred. Any defendant receiving the herein specified alternative sentence of litter pickup shall provide within a time to be set by the court written acknowledgment from said conservation officers or environmental officers that the sentence has been completed.

(5) Any person who has been found by the court to have willfully failed to comply with the terms of an alternative sentence imposed by the court pursuant to this section is subject at the discretion of the court to up to twice the original penalty provisions available to the court at the time of conviction.

(6) If any litter is thrown or cast from a motor vehicle or boat, such action is prima facie evidence that the driver of such motor vehicle or boat intended to violate the provisions of this section. If any litter is dumped or discharged from a motor
vehicle or boat, such action is prima facie evidence that the
owner and driver of such motor vehicle or boat intended to
violate the provisions of this section.

(b) Any litter found on any public or private property with
any indication of ownership on it will be evidence creating a
rebuttable inference it was deposited improperly by the person
whose identity is indicated, and any person who improperly
disposes of litter is subject to either a civil fine of up to five
hundred dollars for such litter or required to pay the costs of
removal of such litter if the removal of such litter is required to
be done by the division, at the discretion of the director. All
such fines and costs shall be deposited to the litter control fund:
Provided, That no inference shall be drawn solely from the
presence of any logo, trademark, trade name or other similar
mass reproduced identifying character appearing on litter found.

(c) Every person who is convicted of or pleads guilty to
disposing of litter in violation of subsection (a) of this section
shall pay the sum of not less than fifty dollars nor more than
five hundred dollars as costs for clean-up, investigation and
prosecution in such case, in addition to any other court costs
that the court is otherwise required by law to impose upon such
convicted person.

The clerk of the circuit court, magistrate court or municipal
court wherein such additional costs are imposed shall, on or
before the last day of each month, transmit all such costs
received under this subsection to the state treasurer for deposit
in the state treasury to the credit of a special revenue fund to be
known as the litter control fund which is hereby continued.
Expenditures for purposes set forth in this section are not
authorized from collections but are to be made only in accor-
dance with appropriation and in accordance with the provisions
of article three, chapter twelve of this code and upon fulfillment
of the provisions set forth in article two, chapter five-a of this
code: Provided, That for the fiscal year ending the thirtieth day
of June, one thousand nine hundred ninety-three, expenditures
shall be authorized from collections. Amounts collected which
are found from time to time to exceed the funds needed for the
purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(d) (1) The commissioner of the division of motor vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case may be, a copy of subsection (a) of this section.

(2) The commissioner of the division of highways shall cause appropriate signs to be placed at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

(e) Any state agency or political subdivision that owns, operates or otherwise controls any public area as may be designated by the director by rule promulgated pursuant to subdivision (8), subsection (a), section twenty-five of this article, shall procure and place litter receptacles at its own expense upon its premises and shall remove and dispose of litter collected in such litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the said rules of the director, any person who fails to place and maintain such litter receptacles upon his or her premises in violation of this subsection or the rules of the director shall be fined fifteen dollars per day of such violation.

(f) No portion of this section shall be construed to restrict a private owner in the use of the owner's own private property in any manner otherwise authorized by law.

(g) Any law-enforcement officer who shall observe a person violating the provisions of this section has a mandatory duty to arrest or otherwise prosecute the violator to the limits provided herein. The West Virginia division of highways shall investigate and cause to be prosecuted violations of this section occurring upon the highways of the state as the term “highways” is defined in chapter seventeen of this code.
CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.

(a) A person shall not:

1. Appear in a public place in an intoxicated condition;
2. Drink alcoholic liquor in a public place;
3. Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage;
4. Tender a drink of alcoholic liquor to another person in a public place;
5. Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the commissioner, without having first obtained written authority from the said commissioner therefor; or
6. Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: Provided, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance of such a citation, transport the individual to the individual's present residence or arrange for such transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer as defined by
section seventeen, article eleven, chapter twenty-seven of this code; or (4) if the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer, the law-enforcement officer shall serve as the chief complaining witness. The judicial officer must make a finding that there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken: (1) If the individual is no longer incapacitated, he or she may be released; (2) if the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or (3) if the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of article five or six-a, chapter twenty-seven of this code.

(d) Any law-enforcement officer is hereby authorized and empowered to arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: Provided, That the law-enforcement officer may use reasonable force to prevent harm to himself or herself, the individual arrested or others in carrying out the provisions of this section.
(e) Any person who violates subdivision (1), subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options: (1) Upon first offense, a fine of not less than five dollars nor more than one hundred dollars. If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours duration at the nearest community mental health — mental retardation center, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges; (2) upon conviction for a second offense, a fine of not less than five dollars nor more than one hundred dollars and not more than sixty days in the county or regional jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health — mental retardation center; (3) upon third and subsequent convictions, a fine of not less than five dollars nor more than one hundred dollars and not less than five nor more than sixty days in county or regional jail or a fine of not less than five dollars nor more than one hundred dollars and completion of not less than five hours of alcoholism counseling at the nearest community mental health — mental retardation center: Provided, That three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: Provided, however, That for the educational counseling programs described in this subsection the community mental health — mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to articles five and six-a, chapter twenty-seven of this code.

(g) Any person who violates subdivision (2), subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five nor more
than one hundred dollars; and upon a second or subsequent conviction thereof, shall be fined not less than five nor more than one hundred dollars, or confined in the county or regional jail not more than sixty days, or both.

(h) Any person who violates subdivision (3), subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five nor more than one hundred dollars, or confined in the county or regional jail not more than sixty days, or both.

(i) Any person who violates subdivision (4) or (5), subsection (a) of this section shall be guilty of a misdemeanor and, upon his or her first conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars; and upon conviction of second or subsequent offense, he or she shall be guilty of a felony and shall be confined in the penitentiary of this state for a period of not less than one year nor more than three years.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39a. Making, issuing, etc., worthless checks; penalty.

(a) It shall be unlawful for any person, firm or corporation to make, draw, issue, utter or deliver any check, draft or order for the payment of money or its equivalent upon any bank or other depository, knowing or having reason to know there is not sufficient funds on deposit in or credit with such bank or other depository with which to pay the same upon presentation. The making, drawing, issuing, uttering or delivering of any such check, draft or order, for or on behalf of any corporation, or its name, by any officer or agent of such corporation, shall subject such officer or agent to the penalty of this section to the same extent as though such check, draft or order was his or her own personal act.

(b) This section shall not apply to any such check, draft or order when the payee or holder knows or has been expressly notified prior to the acceptance of same or has reason to believe that the drawer did not have on deposit or to his or her credit
with the drawee sufficient funds to insure payment as aforesaid, nor shall this section apply to any postdated check, draft or order. This section shall not apply when such insufficiency of funds or credit is caused by any adjustment to the drawer’s account by the bank or other depository without notice to the drawer or is caused by the dishonoring of any check, draft or order deposited in the account unless there is knowledge or reason to believe that such check, draft or order would be so dishonored.

(c) Any person who shall violate the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; and upon a third or subsequent conviction thereof, shall be fined not more than one hundred dollars, or confined in the county or regional jail not more than ten days, or both.

CHAPTER 181

(Com. Sub. for S. B. 355 — By Senators Ross and Sharpe)

[Passed March 9, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article six-b of said chapter, all relating to eliminating two special revenue accounts maintained by the division of motor vehicles; and allowing assessors to retain the entire fee for farm-use exemption certificates.

Be it enacted by the Legislature of West Virginia:

That section two, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article six-b of said chapter be amended and reenacted, all to read as follows:
Article 3. Original and Renewal of Registration; Issuance of Certificates of Title.

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.

(a) Every motor vehicle, trailer, semitrailer, pole trailer and recreational vehicle when driven or moved upon a highway is subject to the registration and certificate of title provisions of this chapter except:

(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 division as authorized under this chapter;

(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 of the implement 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 of the owner’s land, 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 attached to the implement, to and from a repair shop for repairs. The exemption in this subdivision from registration and license requirements also applies to any vehicle described in this subsection 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 of the trailer 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:

(A) The exemptions contained in this section 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 is owned by the same or different persons;

(B) Any vehicle exempted under this subsection from the requirements of annual registration certificate and license plates and fees for the registration certificate and license plate may not use the highways between sunset and sunrise;

(C) Any vehicle exempted under this section from the requirements of annual registration certificate and license plates may use the highways as provided in this section whether the exempt vehicle is self-propelled, towed by another exempt vehicle or towed by another vehicle required to be registered;

(D) Any vehicle used as an implement of husbandry exempt under this section shall 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 to the applicant 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, which shall be retained by the assessor;

(ii) A farm-use exemption certificate shall not exempt the applicant from maintaining the security 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 the offense of operating a vehicle without a farm-use exemption certificate, if required under this section, may be convicted of the offense 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 which is owned by the government of the United States;

(5) Any wrecked or disabled vehicle towed by a licensed wrecker or dealer on the public highways of this state;

(6) The following recreational vehicles are exempt from the requirements of annual registration, license plates and fees, unless otherwise specified by law, but are 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) Notwithstanding the provisions of subsection (a) 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

(3) Factory-built homes are subject to the certificate of title provisions of this chapter.

ARTICLE 6B. LICENSE SERVICES.

§17A-6B-3. Fee required for license certificate; special fund created.

The initial application fee for a certificate to engage in the license service business is twenty-five dollars. The renewal fee for the certificate is twenty-five dollars.
AN ACT to amend and reenact sections four, ten and twelve, article three, chapter seventeen-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 seventeen-a; to amend and reenact section seven, article four of said chapter; to amend and reenact sections one, four, seven, eight and ten, article four-a of said chapter; to further amend said article by adding thereto a new section, designated section two-a; and to amend article six of said chapter by adding thereto a new section, designated section one-b, all relating to removing the privilege tax on vehicles sold to automobile rental businesses and imposing a daily tax of twenty-five cents to be paid by the rental businesses; allowing the use of electronic transmission and recording of vehicle registration, title and lien information among dealers, banks and the division of motor vehicles; providing that a copy of the electronic record of a certificate of title or lien is admissible as evidence; authorizing dealers to issue vehicle registration documents and plates after collecting all fees and taxes; setting fees for recordation of lien releases; providing criminal penalties for an agent of the division of motor vehicles who issues vehicle registration without first performing certain duties; providing for issuance of liens, titles and registration in electronic format; authorizing service providers to administer electronic exchange of information, documents and fees and to provide forms and materials; providing for revocation of authority; authorizing the motor vehicle dealer advisory board to establish fees charged by motor vehicle dealers; requiring bond; and providing that when a vehicle is subject to an electronic lien, the certificate of title shall be considered held by the lienholder for certain purposes.
Be it enacted by the Legislature of West Virginia:

That sections four, ten and twelve, article three, chapter seventeen-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 seventeen-a; that section seven, article four of said chapter be amended and reenacted; that sections one, four, seven, eight and ten, article four-a of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section two-a; and that article six of said chapter be amended by adding thereto a new section, designated section one-b, all to read as follows:

Article
3. Original and Renewal of Registration; Issuance of Certificates of Title.
4. Transfers of Title or Interest.
4A. Liens and Encumbrances on Vehicles to be Shown on Certificate of Title, Notice to Creditors and Purchasers.
6. Licensing of Dealers, Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

§17A-3-10. Division to issue registration card; duplicate to county assessor.

§17A-3-12. Commissioner to issue certificate of title; signatures on certificate; certificate of title to be delivered to owner or lienor.

§17A-3-17a. Application for registration; certain motor vehicle dealers authorized to issue certificates of registration for certain vehicles.

*§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 for the vehicle, whether original issues or duplicates, may not be issued or furnished by the division of motor vehicles or any other officer or agent 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 in either an electronic or paper format. The application shall be upon a blank form to be furnished by the

* Clerk's Note: This section was also amended by SB 384 (Chapter 183), which passed prior to this act.
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. A duly certified copy of the divi-
sion's electronic record of a certificate of title shall be admissi-
ble in any civil, criminal or administrative proceeding in this
state as evidence of ownership.

(b) A tax is 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 of the vehicle 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
of the vehicle 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 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 of
the vehicle 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 bank-
ruptcy 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, partnership or limited
liability company.

(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
vehicles registered at a gross weight of fifty-five thousand
pounds or more, or to the titling of Class C 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
vehicles in excess of fifty-five thousand pounds and Class C
semitrailers, full trailers, pole trailers and converter gear does
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
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 of this state, 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 is not 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.

(11) The tax imposed by this section does not apply to titling of vehicles rented daily or monthly by West Virginia businesses. A tax is imposed upon the daily payments for the rental of any motor vehicle rented in West Virginia, which tax is twenty-five cents for each day of the period of rental of the motor vehicle. The tax shall be remitted to the division of motor vehicles on a monthly basis by the lessor of the vehicle.

(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, or any person, while acting as an agent of the division of motor vehicles issues a vehicle registration without first collecting the fees and taxes or fails to perform any other duty required by this chapter to be performed before a vehicle registration is issued is on the first offense guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or be confined in the county or regional jail for a period not to exceed six months or, in the discretion of the court, both fined and confined. 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 the person returns to this state or the date his or her dependent returns to this state, whichever is later.
(f) 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 confined in the county or regional jail for not more than one year or, both fined and confined. For each subsequent offense, the fine may be increased to not more than two thousand dollars, with confinement in the county or regional jail not more than one year or, both fined and confined.

(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.

(g) Notwithstanding any other provision to the contrary, whenever reference is made to the application for or issuance of any title or the recordation or release of any lien, it shall be understood to include the application, transmission, recordation, transfer of ownership and storage of information in an electronic format.

§17A-3-10. Division to issue registration card; duplicate to county assessor.

The division upon registering a vehicle, or an agent of the division upon collecting the required fees and taxes in accordance with the provisions of section one-b, article six of this chapter, shall issue a registration card to be delivered to the owner and containing thereon the date issued, the name and address of the owner, the registration number assigned to the vehicle and such description of the vehicle as determined by the commissioner. The division shall send a duplicate of said registration card to the assessor of the county in which the owner resides, or in cases of nonresidents of the state, to the assessor of the county wherein the vehicle is located.
§17A-3-12. Commissioner to issue certificate of title; signatures on certificate; certificate of title to be delivered to owner or lienor.

(a) The commissioner, if satisfied that the applicant for a certificate of title is the owner of such vehicle, or otherwise entitled to have the same registered in the applicant's name, shall issue an appropriate certificate of title in either an electronic or paper format. The certificate of title in an electronic format shall contain all of the information required by this section.

(b) The certificate of title shall contain upon the face thereof the date issued, the name and address of the owner, the description of the vehicle as determined by the commissioner, and a statement of the owner's title and of all liens and encumbrances upon the vehicle therein described and whether possession is held by the owner under a lease, contract of conditional sale or other like agreement, and shall bear thereon the seal of the division.

(c) The certificate of title shall contain upon the reverse side a space for the signature of the owner and the owner shall write his or her name with pen and ink in the space upon receipt of the certificate. The certificate shall also contain upon the reverse side forms for assignment of title or interest and warranty thereof by the owner with space for notation of liens and encumbrances upon the vehicle at the time of a transfer.

(d) The commissioner, upon issuing a certificate of title, shall deliver same in either an electronic or paper format to the person who holds legal title to the vehicle described on the face of said certificate: Provided, That when a certificate of title is issued showing upon the face thereof a lien or encumbrance of liens or encumbrances, the certificate of title shall be delivered to the lienholder in either an electronic or paper format in order of priority. It shall be unlawful and constitute a misdemeanor for a lienor who holds a certificate of title, as hereinabove in this section provided, to refuse or fail to surrender the certificate of title to the person legally entitled thereto within ten days after the lien or encumbrance or liens or encumbrances shown on the face thereof shall have been paid and satisfied.
§17A-3-17a. Application for registration; certain motor vehicle dealers authorized to issue certificates of registration for certain vehicles.

The division may authorize a motor vehicle dealer as defined and licensed in accordance with the provisions of article six of this chapter to issue or transfer motor vehicle registration plates upon the sale of any motor vehicle in compliance with the provisions of section one-b, article six of this chapter. The division shall provide to an authorized motor vehicle dealer the necessary supplies, registration plates, registration decals and instructions necessary for the issuance and transfer of motor vehicle registrations. The division may authorize a service provider to distribute the necessary supplies.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-7. Release by lienholder to owner.

A person holding a lien or encumbrance as shown upon a certificate of title upon a vehicle may release the lien or encumbrance or assign his or her interest to the owner without affecting the registration of the vehicle. The division, upon receiving an electronic acknowledgment of a release of lien from the lienholder or a certificate of title upon which a lienholder has released or assigned his or her interest to the owner or upon receipt of a certificate of title not so endorsed but accompanied by a legal release from a lienholder of this interest in or to a vehicle, shall issue a new certificate of title as upon an original application. The division, upon receiving an electronic acknowledgment of a release of lien from the lienholder shall issue, without further application or fee a new certificate of title free of any lien or encumbrance to the vehicle owner to the address shown in the division’s records.

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-4. Deferred purchase money lien or encumbrance may be filed within sixty days after purchase; effective date of lien; dealer to record lien; fees.
§17A-4A-7. Release of lien or encumbrance shown on certificate of title.

§17A-4A-8. Failure to execute release or to surrender certificate when lien paid.

§17A-4A-10. Fee for recording and release of lien.

§17A-4A-1. Certificate to show liens or encumbrances.

The division 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 division may consider 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 division shall thereupon send or deliver it by either paper or electronic means to the holder of the first lien.


(a) Notwithstanding any requirement in this chapter that a lien on a motor vehicle shall be noted on the face of the certificate of title, if there are one or more liens or encumbrance on a vehicle, trailer, semitrailer, pole trailer, factory-built home or recreational vehicle, the division may electronically transmit the lien to the first lienholder and notify the first lienholder of any additional liens. Subsequent lien satisfactions may be electronically transmitted to the division and shall include the name and address of the person satisfying the lien and any other information required by the division as a condition of participating in the electronic lien information exchange program.
(b) The division may enter into agreements with a service provider or providers to administer the electronic exchange of lien information between dealers, financial institutions and the division. For the purposes of this section the term financial institutions shall have the same meaning as defined in section ten-b, article six of this chapter.

(c) When electronic transmission of liens and lien satisfaction is used, a hard copy certificate of title need not be issued until the last lien is satisfied and a clear hard copy certificate of title is issued to the owner of the vehicle. When a vehicle is subject to an electronic lien, the certificate of title for the vehicle shall be considered to be physically held by the lienholder for the purpose of compliance with state and federal odometer disclosure requirements and for any other requirement of this code. A duly certified copy of the division's electronic record of the lien shall be admissible in any civil, criminal or administrative proceeding in this state as evidence of the existence of the lien.

(d) For the purposes of this chapter, whenever reference is made by this code to the physical production of a certificate of title as a paper document, or reference to the completion of information related to recording a lien as a paper document, the reference shall be understood to also include the transmission and recordation of the information in an electronic format.

§17A-4A-4. Deferred purchase money lien or encumbrance may be filed within sixty days after purchase; effective date of lien; dealer to record lien; fees.

(a) A deferred purchase money lien or encumbrance upon any motor vehicle may be perfected by recording in either electronic or paper format the name and address of the lienholder upon the face of the certificate of title for the motor vehicle. If an application for a certificate of title is filed with the division of motor vehicles within sixty days after the date of purchase of the motor vehicle, the effective date of the lien or encumbrance shall be the date the lien or encumbrance was created. If an application for a certificate of title is not filed within the sixty-day period, the lien shall be perfected from the date it was filed with the division of motor vehicles.
(b) In all transactions involving a deferred purchase money lien or encumbrance upon a motor vehicle, the motor vehicle dealer shall collect and remit to the division of motor vehicles the title, tax and registration fees required under section four, article three of this chapter and file and record with the division of motor vehicles any lien created as a result of the transaction: Provided, That a motor vehicle dealer may remit the title, tax and registration fees through any license service that is licensed by the division of motor vehicles.

(c) No fee may be charged by a motor vehicle dealer for its services required under this section except that fee authorized by section one-b, article six of this chapter, or subdivision (6), subsection (a), section one hundred nine, article three, chapter forty-six-a of this code.

§17A-4A-7. Release of lien or encumbrance shown on certificate of title.

An owner upon securing the release of any lien or encumbrance upon a vehicle shown upon the certificate of title issued therefor may exhibit the document evidencing such release, signed by the person or persons making the release and acknowledged before a notary public or someone authorized by the laws of this state to take acknowledgments of deeds, and this document together with the certificate of title shall be returned to the division; or the lienholder may release the lien by endorsing across the lien in his or her favor on the face of the title or closely adjacent thereto the following words or words of similar effect or purport: "This lien, this day fully paid, satisfied and released, this day of ," and duly signing and executing said endorsement and acknowledging the same before a notary public and having the notary public execute a certificate of the acknowledgment in the form required for releasing deeds of trust in this state; or when it is impossible to secure either such release from the beneficiary or holder of the lien, the owner may exhibit to the division whatever evidence may be available showing that the debt secured has been satisfied, together with a statement by the owner under oath that the debt has been paid and the certificate of title to such vehicle.
The division when satisfied as to the genuineness and regularity thereof shall issue to the owner either a new certificate of title in proper form or an endorsement or rider showing the release of the lien or encumbrance which the division shall attach to the outstanding certificate of title. For the purposes of this article, the term release shall mean either an electronic or paper transaction format.

§17A-4A-8. Failure to execute release or to surrender certificate when lien paid.

It shall be unlawful and constitute a misdemeanor for a lienor who holds a certificate of title either electronically or in a paper format as provided in this article to refuse or fail to execute a release as provided for in the next preceding section, or to refuse or fail to surrender the certificate of title to the person legally entitled thereto within fifteen days after the lien shall have been paid and satisfied.

§17A-4A-10. Fee for recording and release of lien.

The division of motor vehicles is hereby authorized to charge a fee of five dollars for the recording of any lien either in an electronic or paper format created by the voluntary act of the owner and endorsing it upon the title certificate issued pursuant to this article, and the division of motor vehicles is hereby authorized to charge a fee of fifty cents for recordation of any release of a lien created by the voluntary act of the owner: Provided, That no charge shall be made for the endorsement and recordation of liens or releases thereof as provided under section nine of this article. No charge shall be made for the issuance of a title to the owner of a vehicle upon the receipt of an electronic release of the final lien.

ARTICLE 6. LICENSING OF DEALERS, WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-1b. Dealers authorized to issue motor vehicle registration.

(a) Notwithstanding any other provision in this chapter, the division may allow a licensed motor vehicle dealer as defined in section one of this article, authority to issue or transfer motor
vehicle registrations for vehicles sold by the dealer. The authority to issue and transfer motor vehicle registrations shall be contingent upon the dealer collecting all fees and taxes required for the titling and registration of vehicles, receiving proof of insurance as described in subsection (e), section three, article three of this chapter, and if applicable receiving the receipt showing full payment of personal property taxes in accordance with section three-a, article three of this chapter.

(b) Authorization to issue and transfer motor vehicle registrations shall be contingent on the dealer completing an application provided by the division and meeting all criteria established by the division. The authority shall also be contingent upon the dealer agreeing to participate fully in a computerized system of electronic submission of registration, titling and lien information and all fees and taxes required under the provisions of this chapter, either directly to the division or through an authorized service provider selected and approved by the division. Any transaction conducted under the provisions of this section shall be conditional pending the determination by the division that the application for title, registration and lien recordation is complete, accurate and in accordance with the provisions of this chapter.

(c) The authority to participate in the electronic transmission of title, registration and lien information shall be immediately revoked upon revocation or cancellation of a dealer's license issued under the provisions of this chapter: Provided, That the authority to issue and transfer motor vehicle registrations may be revoked by the division immediately and separately from any other action against the dealer's license if the division determines that the terms of the agreement or agreements authorizing issuance, transfer or renewal of a vehicle registration or the electronic transmission of information have been violated.

(d) A fee established by the motor vehicle dealer advisory board may be charged by a motor vehicle dealer for its services required under this section.
(e) Only motor vehicle registrations of a type specified by the division may be issued, transferred or renewed by the authorized dealer.

(f) All fees and taxes collected by an authorized dealer under the provisions of this section shall be deposited in a financial institution designated by the division or the service provider in the manner prescribed by the division.

(g) The division may authorize a service provider to supply an authorized dealer with the necessary forms, supplies, registration plates and registration renewal decals necessary to enable the authorized dealer to perform the duties and functions specified in this section.

(1) Any service provider authorized to perform services under the provisions of this section shall post a bond of the applicant in the penal sum of one million dollars, in the form prescribed by the commissioner, conditioned that the applicant will not in the conduct of business practice any fraud which, or make any fraudulent representation which, shall cause a financial loss to any dealer, financial institution or agency, or the state of West Virginia, with a corporate surety thereon authorized to do business in this state, which bond shall be effective as of the date on which the authorization to provide services commences.

(2) The service provider is solely responsible for the inventory, tracking, safety and reconciliation of all supplies, registration plates, registration decals or other motor vehicle credentialing items in accordance with procedures established by the division and subject to audits by the division.

(3) The division may rescind without notice the authority of a service provider to perform services when the division has cause to believe that any state or federal law has been violated or that the service provider is not adhering to the terms and conditions of the authorization agreement.

(h) The service provider and the authorized dealer assume full responsibility for the care, custody, control, disclosure and use of any information provided by the division in order to
execute the duties and responsibilities required by this section. Each service provider and each authorized dealer agrees to ensure that the disclosure of information to it and its handling of information received from the division complies with all federal and state statutes and division directives governing the disclosure and protection of such information.

CHAPTER 183

(S. B. 384 — By Senator Bailey)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the privilege tax on vehicles sold to automobile rental businesses; and imposing a daily tax of twenty-five cents to be paid by the rental business.

Be it enacted by the Legislature of West Virginia:

That section four, article three, chapter seventeen-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. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

*§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 for the vehicle, 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

* Clerk's Note: This section was also amended by SB 357 (Chapter 182), which passed subsequent to this act.
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 distin-
guishing 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 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 of the vehicle 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
of the vehicle 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 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 of
the vehicle 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, partnership or limited liability company.

(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 vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C 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
vehicles in excess of fifty-five thousand pounds and Class C
semitrailers, full trailers, pole trailers and converter gear does
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
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 of this
state, 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 is not 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.

(11) The tax imposed by this section does not apply to titling of vehicles rented daily or monthly by West Virginia businesses. A tax is imposed upon the daily payments for the rental of any motor vehicle rented in West Virginia, which tax is twenty-five cents for each day of the period of rental of the motor vehicle. The tax shall be remitted to the division of motor vehicles on a monthly basis by the lessor of the vehicle.

(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 confined in the county or
regional jail for a period not to exceed six months or, in the
discretion of the court, both fined and confined. 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 the person returns to
this state or the date his or her dependent returns to this state,
whichever is later.

(f) 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 confined in the county or
regional jail for not more than one year or, both fined and
confined. For each subsequent offense, the fine may be increased to not more than two thousand dollars, with confinement in the county or regional jail not more than one year or, both fined and confined.

(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.

CHAPTER 184

(S. B. 366 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 23, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special registration plates; prohibiting the commissioner of motor vehicles from approving or authorizing any new special registration plates for nonprofit, charitable and educational organizations; and authorization nonprofit, charitable and educational organizations which were previously approved for a special registration plate to continue to market plates to their members and the general public.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article three, chapter seventeen-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. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions;
commissioner to promulgate forms; suspension and nonrenewal.

1 (a) The division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.

2 (b) Registration plates issued by the division shall meet the following requirements:

3 (1) Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued; the name of this state, which may be abbreviated; and the year number for which it is issued or the date of expiration of the plate.

4 (2) Every registration plate and the required letters and numerals on the plate shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight: Provided, That the requirements of this subdivision shall not apply to the year number for which the plate is issued or the date of expiration.

5 (3) Registration numbering for registration plates shall begin with number two.

6 (c) The division may not issue, permit to be issued or distribute any special registration plates except as follows:

7 (1) The governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

8 (2) State officials and judges may be issued special registration plates as follows:

9 (A) Upon appropriate application, there shall be issued to the secretary of state, state superintendent of schools, auditor, treasurer, commissioner of agriculture and the attorney general, the members of both houses of the Legislature, including the elected officials thereof, the justices of the supreme court of appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the
United States district courts for the state of West Virginia and the judges of the United States court of appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for a Class A motor vehicle owned by the official or his or her spouse: Provided, That the division may not issue more than two plates for each official.

(B) Each plate issued pursuant to this subdivision shall bear any combination of letters and numbers not to exceed an amount determined by the commissioner and a designation of the office. Each plate shall supersede the regular numbered plate assigned to the official or his or her spouse during the official’s term of office and while the motor vehicle is owned by the official or his or her spouse.

(C) An annual fee of fifteen dollars shall be charged for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(3) Members of the national guard forces may be issued special registration plates as follows:

(A) Upon receipt of an application on a form prescribed by the division and receipt of written evidence from the chief executive officer of the army national guard or air national guard, as appropriate, or the commanding officer of any United States armed forces reserve unit that the applicant is a member thereof, the division shall issue to any member of the national guard of this state or a member of any reserve unit of the United States armed forces a special registration plate designed by the commissioner for any number of Class A motor vehicles owned by the member.

(B) An initial application fee of ten dollars shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this section.

(C) A surviving spouse may continue to use his or her deceased spouse’s national guard forces license plate until the
surviving spouse dies, remarries or does not renew the license plate.

(4) Specially arranged registration plates may be issued as follows:

(A) Upon appropriate application, any owner of a motor vehicle subject to Class A registration, or a motorcycle subject to Class G registration, as defined by this article, may request that the division issue a registration plate bearing specially arranged letters or numbers with the maximum number of letters or numbers to be determined by the commissioner. The division shall attempt to comply with the request wherever possible.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the orderly distribution of the plates: Provided, That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through two thousand.

(C) An annual fee of fifteen dollars shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(5) Honorably discharged veterans may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner of the division of motor vehicles.

(B) A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and
104 deposited in a special revolving fund to be used for the admin-
105 istration of this section: Provided, That nothing in this section
106 may be construed to exempt any veteran from any other
107 provision of this chapter.

108 (C) A surviving spouse may continue to use his or her
deceased spouse's honorably discharged veterans license plate
until the surviving spouse dies, remarryes or does not renew the
license plate.

112 (6) Disabled veterans may be issued special registration
plates as follows:

114 (A) Upon appropriate application, there shall be issued to
any disabled veteran who is exempt from the payment of
registration fees under the provisions of this chapter a registra-
tion plate for a vehicle titled in the name of the qualified
applicant which bears the letters "DV" in red and also the
regular identification numerals in red.

119 (B) A surviving spouse may continue to use his or her
deceased spouse's disabled veterans license plate until the
surviving spouse dies, remarryes or does not renew the license
plate.

123 (C) A qualified disabled veteran may obtain a second
disabled veteran license plate as described in this section for
use on a passenger vehicle titled in the name of the qualified
applicant. An annual fee of fifteen dollars, in addition to all
other fees required by this chapter, shall be charged for the
second plate.

128 (7) Recipients of the distinguished purple heart medal may
be issued special registration plates as follows:

133 (A) Upon appropriate application, there shall be issued to
any armed service person holding the distinguished purple heart
medal for persons wounded in combat a registration plate for a
vehicle titled in the name of the qualified applicant bearing
letters or numbers. The registration plate shall be designed by
the commissioner of motor vehicles and shall denote that those
individuals who are granted this special registration plate are
(B) Registration plates issued pursuant to this subdivision are exempt from all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s purple heart medal license plate until the surviving spouse dies, remarries or does not renew the license plate.

(D) A recipient of the purple heart medal may obtain a second purple heart medal license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the second plate.

(8) Survivors of the attack on Pearl Harbor may be issued special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the armed services that participated in and survived the attack on Pearl Harbor on the seventh day of December, one thousand nine hundred forty-one, shall be issued a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the commissioner of motor vehicles.

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(D) A survivor of the attack on Pearl Harbor may obtain a second survivors of the attack on Pearl Harbor license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen
dollars, in addition to all other fees required by this chapter, shall be charged for the second plate.

(9) Nonprofit charitable and educational organizations previously authorized may be issued special registration plates as follows:

(A) Nonprofit charitable and educational organizations authorized under the program established under the prior enactment of this subdivision may continue to market the special registration plate previously approved to organization members and the general public. However, after the effective date of the reenactment of this section, the commissioner shall not approve or authorize any additional nonprofit charitable and educational organizations to design or market registration license plates.

(B) Approved nonprofit charitable and educational organizations authorized under the prior enactment of this subdivision may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of fifteen dollars, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the division of motor vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organizations' logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(C) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.

(D) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in a special revolving fund to pay the
administrative costs. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(10) Specified emergency or volunteer registration plates may be issued as follows:

(A) Any owner of a motor vehicle who is a resident of the state of West Virginia and who is a certified paramedic or emergency medical technician, a member of a volunteer fire company or a paid fire department, a member of the state fire commission, the state fire marshal, the state fire marshal’s assistants, the state fire administrator and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of ten dollars, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into a special revolving fund to be used for the purpose of compensating the division of motor vehicles for additional costs and services required in the issuing of the special registration and for the administration of this section.

(11) Special scenic registration plates:
(A) Upon appropriate application, the commissioner shall issue a special registration plate displaying a scenic design of West Virginia no later than the first day of January, one thousand nine hundred ninety-six. This special plate shall display the words "Wild Wonderful" as a slogan.

(B) A special one-time initial application fee of ten dollars shall be charged in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this chapter.

(12) Honorably discharged marine corps league members may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged marine corps league member a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner of the division of motor vehicles.

(B) A special one-time initial application fee of ten dollars shall be charged in addition to all other fees required by this chapter. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged marine corps league license plate until the surviving spouse dies, remarries or does not renew the license plate.

(13) Military organization registration plates:

(A) The division may issue a special registration plate for the members of any military organization chartered by the United States Congress upon receipt of a guarantee from such organization of a minimum of one hundred applicants. The insignia on the plate shall be designed by the commissioner.
(B) Upon appropriate application, members of the chartered organization in good standing, as determined by the governing body of the chartered organization, may be issued a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) A special one-time initial application fee of ten dollars shall be charged for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this chapter: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse’s military organization registration plate until the surviving spouse dies, remarries or does not renew the special military organization registration plate.

(14) Special nongame wildlife registration plates:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia nongame wildlife no later than the first day of January, one thousand nine hundred ninety-eight. This special plate shall display a species of nongame wildlife native to West Virginia as prescribed and designated by the commissioner and the director of the division of natural resources.

(B) An annual fee of fifteen dollars shall be charged for each special nongame wildlife registration plate in addition to all other fees required by this chapter. All annual fees collected for nongame wildlife registration plates shall be deposited in a special revenue account designated the nongame wildlife fund and credited to the division of natural resources.

(C) A special one-time initial application fee of ten dollars shall be charged in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.
(15) Members of the silver haired legislature may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any person who is a duly qualified member of the silver haired legislature a specialized registration plate which bears recognition of the applicant as a member of the silver haired legislature.

(B) A qualified member of the silver haired legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the plate. All annual fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.

(d) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the proper forms to be used in making application for the special license plates authorized by this section.

(e)(1) Nothing in this section may be construed to require a charge for a free prisoner of war license plate or a free recipient of the congressional medal of honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse’s prisoner of war or congressional medal of honor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the congressional medal of honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the second special plate.
(f) Special ten-year registration plates may be issued as follows:

(1) The commissioner may issue or renew for a period of no more than ten years any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by section three-a, article ten of this chapter: Provided, That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or failure to pay personal property taxes as required by section three-a of this article.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by section fifteen, article ten of this chapter, section three, article three of this chapter or section three-a, article ten of this chapter for the period requested.

(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or from paying personal property taxes on any motor vehicle as required by section three-a of this article.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached thereto to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner.

(i) Any license plate issued or renewed pursuant to this chapter, which is paid for by a check that is returned for nonsufficient funds, is void without further notice to the applicant. The applicant may not reinstate the registration until
the returned check is paid by the applicant in cash, money order or certified check and all applicable fees assessed as a result thereof have been paid.

CHAPTER 185

(S. B. 223 — By Senator Rose)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article two, chapter seventeen-b of said code, all relating to change of address; requiring notice of change of address if assigned new address by the postal service; and eliminating certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirteen, article two, chapter seventeen-b of said code be amended and reenacted, all to read as follows:

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17B. Motor Vehicle Driver's Licenses.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATE OF TITLE.

§17A-3-18. Notice of change of address or name.
(a) Whenever any person after making application for or obtaining the registration of a vehicle or a certificate of title shall move from the address named in the application or shown upon a registration card or certificate of title the person shall within ten days thereafter notify the division in writing of the old and new addresses.

(b) Whenever any person, after making application for or obtaining the registration of a vehicle or a certificate of title, is assigned a new address by the United States postal service or other legally constituted authority, the person shall notify the division in writing of the old and new address and of the registration or title number of the vehicle held by the person. The notification of change of address shall be made at least ten days prior to the last date on which mail with the old address is deliverable by the United States postal service.

(c) Whenever the name of any person who has made application for or obtained the registration of a vehicle or a certificate of title is thereafter changed by marriage or otherwise the person shall within ten days notify the division of the former name and new name upon a form prescribed by the commissioner. The notification shall be accompanied by application for retitle under the new name.

(d) The provisions of section one, article eleven of this chapter relating to imprisonment do not apply to persons who violate the provisions of this section.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-13. Notice of change of address or name.

(a) Whenever any person after applying for or receiving a driver's license moves from the address named in the application or in the license issued to the person, or when the name of a licensee is changed by marriage or otherwise, the person shall within twenty days thereafter notify the division in writing of the old and new addresses or of the former and new names and of the number of any license then held by the person on the forms prescribed by the division.
(b) Whenever any person, after applying for or receiving a driver’s license, is assigned a new address by the United States postal service or other legally constituted authority, the person shall notify the division in writing of the old and new address and of the number of any license held by the person. The notification of change of address shall be made at least twenty days prior to the final date on which mail with the old address is deliverable by the United States postal service.

(c) The provisions of section one, article five of this chapter relating to imprisonment do not apply to persons who violate the provisions of this section.

CHAPTER 186

(H. B. 2448 — By Delegates Cann, Angotti, Jenkins, Davis, Laird, Capito and Tillis)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three hundred two, article nine, chapter forty-six, all relating to the creation and perfection of a lien against a vehicle held as inventory for lease by a person in the business of leasing vehicles.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three hundred two, article nine, chapter forty-six of said code be amended and reenacted, all to read as follows:

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

46. Uniform Commercial Code.
ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-2. Liens and encumbrances subsequently created.

§17A-4A-3. Notice of lien; noninventory lien created by voluntary act of the owner not shown on certificate of title void as to subsequent purchasers and lien creditors; exceptions.

§17A-4A-2. Liens and encumbrances subsequently created.

(a) Liens or encumbrances placed on vehicles by the voluntary act of the owner after the original issue of title to be properly recorded must be shown on the certificate of title. In such cases, the owner or lienholder shall file application with the department on a blank furnished for that purpose, setting forth the lien or liens and such information and evidence of the lien in connection therewith as the department may deem necessary. Such information shall include the name and address of the lienholder, the kind of and nature of the lien, the date thereof, and the amount thereby secured. However, only the name and address of the lienholder shall be endorsed on the title certificate with the endorsement of the fact of such lien as hereinafter provided. The department, if satisfied that it is proper that the same be recorded, and upon surrender of the certificate of title covering the vehicle, shall thereupon issue a new certificate of title, showing the liens or encumbrances in the order of their filing being according to the date, hour and minute of receipt by the department of the application for same.

For the purpose of recording a subsequent lien on a certificate of title, the subsequent lienholder shall make a written request upon the lienholder in possession of the certificate of title, accompanied by proof of the existence of the subsequent lien, stating his or her need to have possession of the certificate of title for the purpose of having his or her lien recorded thereon by the division of motor vehicles. Thereupon, the lienholder in possession of the certificate shall within a reasonable time, not to exceed ten days from the receipt of said written request,
28 deliver the certificate of title to the requesting subsequent
29 lienholder.

30 Upon delivery of the certificate of title, the subsequent
31 lienholder shall immediately forward it and the lienholder’s
32 own application to the division of motor vehicles for the filing
33 of the lien and for the recording of the same on the certificate
34 of title. Upon issuing the new certificate, the department shall
35 thereupon send or deliver it to the holder of the first lien.

36 (b) The provisions of subsection (a) of this section shall not
37 apply to: (1) Vehicles held as inventory for sale by a registered
38 dealer holding title by assignment entered upon a certificate of
39 title; or (2) vehicles for which certificates of title have been
40 issued and are held as inventory for lease by a vehicle rental
41 agency or similar person engaged solely in the business of
42 leasing vehicles. Any lien or encumbrance placed on such
43 vehicles by the voluntary act of the owner shall be created and
44 perfected in accordance with the provisions of article nine,
45 chapter forty-six of this code.

§17A-4A-3. Notice of lien; noninventory lien created by voluntary
1 act of the owner not shown on certificate of title
2 void as to subsequent purchasers and lien credi-
3 tors; exceptions.

1 (a) A certificate of title, when issued by the department
2 showing a lien or encumbrance, shall be deemed from and after
3 the filing with the department of the application therefor
4 adequate notice to the state and its agencies, boards and
5 commissions, to the United States government and its agencies,
6 boards and commissions, to creditors and to purchasers that a
7 lien against the vehicle exists and the recording of such
8 reservation of title, lien or encumbrance in the county wherein
9 the purchaser or debtor resides or elsewhere is not necessary
10 and shall not be required or have any effect. Notwithstanding
11 any other provision of this code to the contrary, and subject to
12 the provisions of subsection (b) of this section and of section
13 four of this article, any lien or encumbrance placed upon a
14 vehicle by the voluntary act of the owner but not shown on such
15 certificate of title shall be void as to any purchaser for value or
lien creditor, who, in either case, without notice of such lien or encumbrance, purchases such vehicle or acquires by attachment, levy or otherwise a lien thereupon.

(b) The creation and perfection of a lien against: (1) A vehicle held as inventory for sale by a registered dealer holding title by assignment; or (2) a vehicle for which a certificate of title has been issued and is held as inventory for lease by a vehicle rental agency or similar person engaged solely in the business of leasing vehicles in accordance with the provisions of article nine, chapter forty-six of this code shall be deemed adequate notice to the state and its agencies, boards and commissions, to the United States government and its agencies, boards and commissions, to creditors and to purchasers that a lien against the vehicle exists, subject to the provisions of section three hundred seven, article nine, chapter forty-six of this code, except that any lien or encumbrance on such a vehicle shall not be effective against the rights of any purchaser for value who purchases such vehicle primarily for personal, family, household or agricultural purposes unless such lien or encumbrance is recorded on the certificate of title or specified on the bill of sale.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPERS.

§46-9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.

(1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under section 9-305;

(b) A security interest temporarily perfected in instruments, certificated securities or documents without delivery under section 9-304 or in proceeds for a ten-day period under section 9-306;
(c) A security interest created by an assignment of a beneficial interest in a trust or a decedent’s estate;

(d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 9-313;

(e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) A security interest of a collecting bank (section 4-208) or arising under the article on sales (see section 9-113) or covered in subsection (3) of this section;

(g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(h) A security interest in investment property which is perfected without filing under section 9-115 or section 9-116.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this article is not necessary or effective to perfect a security interest in property subject to:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this article for filing of the security interest; or

(b) The following statute of this state: Chapter seventeen-a of this code; but during any period in which collateral is inventory: (i) Held for sale by a person who is in the business of selling goods of that kind; or (ii) held for lease by a vehicle rental agency or similar persons engaged solely in the business
of leasing vehicles, the filing provisions of this article (Part 4) apply to a security interest in that collateral created by him or her as debtor; or

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of section 9-103).

(4) Compliance with a statute or treaty described in subsection (3) of this section is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this article.

CHAPTER 187

(Com. Sub. for H. B. 2143 — By Delegate Warner)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, six, seven, ten and thirteen, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to motor vehicle dealers; changing the definition of an established place of business with respect to motor vehicle dealers; and clarifying the criteria for issuance of a dealer license and the use of dealer special license plates.

Be it enacted by the Legislature of West Virginia:

That sections one, six, seven, ten and thirteen, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

§17A-6-1. Definitions.
§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.
§17A-6-7. When application to be made; expiration of license certificate; renewal.
§17A-6-10. Fee required for license certificate; dealer special plates.
§17A-6-13. Use of special plates; records to be maintained by dealer.

§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 or used house trailers, or both, 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.
"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," in addition to the ordinary definitions of the terms, includes 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," in addition to the ordinary definition of that term, also includes 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 is 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
is easily accessible to the public, which conforms to all applicable laws of this state and the ordinances of the municipality in which it is located, if any, which displays 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 has 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 requirement of exclusive use is 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; (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; and (E) the established
place of business has an attached single residential rental unit with an outside separate entrance and occupied by a person or persons with no financial or operational interest in the dealership where the established place of business has space under roof for the display of at least three new motor vehicles and facilities and space therewith for the concurrent servicing and repair of at least two motor vehicles and otherwise meets the requirements set forth in this subdivision.

(18) “Farm machinery” means all machines and tools used in the production, harvesting or care of farm products.

(19) “Established place of business,” in the case of a used motor vehicle dealer, means 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 is easily accessible to the public, conforms to all applicable laws of this state, and the ordinances of the municipality in which it is located, if any, which displays 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 has 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 estab-
lished 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 is not 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 defined: Provided further, That the requirement of exclusive use is met even though: (A) 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; (B) farm machinery is sold thereat; (C) 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; and (D) the established place of business has an attached single residential rental unit with an outside separate entrance and occupied by a person or persons with no financial or operational interest in the dealership where the established place of business has space under roof for the display of at least three motor vehicles and facilities and space therewith for the concurrent servicing and repair of at least two motor vehicles and otherwise meets the requirements set forth herein. (20) "Established place of business," in the case of a house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer and wrecker or dismantler, means a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or appli-
cant and actually occupied or to be occupied by the licensee, as
the case may be, which is easily accessible to the public, which
conforms to all applicable laws of this state and the ordinances
of the municipality in which it is located, if any, which displays
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 has 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.

(21) "Manufacturer" means every person engaged in the
business of reconstructing, assembling or reassembling vehicles
with a special type body required by the purchaser if the vehicle
is subject to the title and registration provisions of this code.

(22) "Transporter" means every person engaged in the
business of transporting vehicles to or from a manufacturing,
assembling or distributing plant to dealers or sales agents of a
manufacturer, or purchasers.

(23) "Recreational 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 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 does 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
321 semitrailers or pole trailers. However, for the purposes of this
322 article only, the term “trailers” has the meaning ascribed to it in
323 subsection (a) of this section.

§17A-6-6. Refusal or issuance of license certificate; license certifi-
cate not transferable.

1 (a) Upon the basis of the application and all other informa-
2 tion before him or her, the commissioner shall make and enter
3 an order denying the application for a license certificate and
4 refusing the license certificate sought, which denial and refusal
5 are final and conclusive unless an appeal is taken in accordance
6 with the provisions of section twenty-one of this article, if the
7 commissioner finds that the applicant (individually, if an
8 individual, or the partners, if a copartnership, or the officers and
9 directors, if a corporation):

10 (1) Has failed to furnish the required bond;
11 (2) Has failed to furnish the required certificate of insur-
12 ance;
13 (3) Has knowingly made false statement of a material fact
14 in his or her application;
15 (4) Has habitually defaulted on financial obligations in this
16 state or any other state or jurisdiction;

17 (5) Has been convicted of a felony: Provided, That upon
18 appeal, the motor vehicle dealers advisory board established
19 pursuant to the provisions of section eighteen-a of this article
20 has the authority to grant as exemption of this restriction if the
21 felony did not involve financial matters, the motor vehicle
22 industry or matters of moral turpitude.

23 (6) So far as can be ascertained, has not complied with and
24 will not comply with the registration and title laws of this state
25 or any other state or jurisdiction;

26 (7) Does not or will not have or maintain at each place of
27 business (subject to the qualification contained in subdivision
28 (17), subsection (a), section one of this article with respect to a
new motor vehicle dealer) an established place of business as defined for the business in question in said section one;

(8) Has been convicted of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler in this state or any other state or jurisdiction;

(9) Has done any act or has failed or refused to perform any duty for which the license certificate sought could be suspended or revoked were it then issued and outstanding;

(10) Is not age eighteen years or older;

(11) Is delinquent in the payment of any taxes owed to the United States, the state of West Virginia or any political subdivision thereof;

(12) Has been denied a license in another state or has been the subject of license revocation or suspension in another state;

(13) Has committed any action in another state which, if it had been committed in this state, would be grounds for denial and refusal of the application for a license certificate; or

(14) Has failed to pay any civil penalty assessed by this state or any other state.

Otherwise, the commissioner shall issue to the applicant the appropriate license certificate which shall entitle the licensee to engage in the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, as the case may be, during the period, unless sooner suspended or revoked, for which the license certificate is issued.

(b) A license certificate issued in accordance with the provisions of this article is not transferable.

§17A-6-7. When application to be made; expiration of license certificate; renewal.
(a) Every license certificate issued in accordance with the provisions of this article shall, unless sooner suspended or revoked, expire on June thirtieth next following the issuance thereof.

(b) A license certificate may be renewed each year in the same manner, for the same fee as prescribed in section ten of this article and upon the same basis as an original license certificate is issued under section six of this article. All applications for the renewal of any license certificate shall be filed with the commissioner at least thirty days before the expiration thereof. Any application for renewal of any license certificate not filed at least thirty days before the expiration may not be renewed except upon payment of the same fee as an original license certificate as prescribed in subsection (a), section ten of this article. The commissioner may allow the delinquent applicant to complete an abbreviated application for renewal in lieu of an original application.

§17A-6-10. Fee required for license certificate; dealer special plates.

(a) The initial application fee for a license certificate to engage in the business of a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, recreational vehicle dealer or wrecker/dismantler/rebuilder is two hundred fifty dollars: Provided, That if an application for a license certificate is denied or refused in accordance with section six of this article, one hundred twenty-five dollars shall be refunded to the applicant. The initial application fee entitles the licensee to dealer special plates as prescribed by subsections (b), (c), (d) and (e) of this section.

(b) The annual renewal fee required for a license certificate to engage in the business of new motor vehicle dealer is one hundred dollars. This fee shall also entitle the licensee to one dealer’s special plate which shall be known as a Class D special plate. Up to two additional Class D special plates shall be issued to the licensee upon application on a form prescribed by the commissioner for such purpose and the payment of a fee of
five dollars for each additional Class D special plate. Any licensee is also entitled to receive additional Class D special plates on a formula basis, that is, one additional Class D special plate per twenty new and used motor vehicles sold at retail and wholesale by the licensee or predecessor during the preceding fiscal year, upon application on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D special plate: Provided, That in the case of a licensee who did not own or operate the business during the preceding fiscal year and who has no predecessor who owned or operated a business during the fiscal year, additional Class D plates shall be issued for the ensuing fiscal year only on a formula basis of one additional Class D plate per twenty new and used motor vehicles which the licensee estimates on his or her application for his or her license certificate he or she will sell at retail and wholesale during the ensuing fiscal year. The licensee may revise his or her estimate if actual sales of new and used motor vehicles in the initial year exceed the estimate by filing an amended application for his or her license certificate. Additional Class D plates shall be issued for the remaining portion of the fiscal year only on a formula basis of one additional Class D plate per twenty new and used vehicles in the revised estimate. A licensee may receive no more than five additional Class D special license plates upon a showing that the licensee’s new vehicle retail sale business requires more special license plates than authorized under the formula established under the provisions of this section. Such showing shall include evidence of the geographical divergence of the licensee’s customer base and the number of licensees holding similar franchises of a particular brand of a motor vehicle to show the need for additional Class D special plates.

(c) The annual renewal fee required for a license certificate to engage in the business of used motor vehicle dealer is one hundred dollars. This fee also entitles the licensee to one dealer’s special plate which shall be known as a Class D-U/C special plate. Up to two additional Class D-U/C special plates shall be issued to the licensee upon application on a form prescribed by the commissioner for such purpose and the
payment of a fee of five dollars for each additional Class D-U/C special plate. Any licensee is also entitled to receive additional Class D-U/C special plates on a formula basis, that is, one additional Class D-U/C special plate per twenty used motor vehicles sold at retail and/or wholesale by the licensee or his or her predecessor during the preceding fiscal year, upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D-U/C special plate: Provided, That in the case of a licensee who did not own or operate the business during the preceding fiscal year and who has no predecessor who owned or operated the business during the preceding fiscal year, additional Class D-U/C plates shall be issued for the ensuing fiscal year only on a formula basis of one additional Class D-U/C plate per twenty used motor vehicles which the licensee estimates on his or her application for the license certificate he or she will sell at retail and/or wholesale during the ensuing fiscal year. The licensee may revise his or her estimate if actual sales of used motor vehicles in the ensuing fiscal year exceed the estimate by filing an amended application for his or her license certificate. Additional Class D-U/C plates shall be issued for the remaining portion of the fiscal year only on a formula basis of one additional Class D-U/C plate per twenty used vehicles in the revised estimate.

(d) The annual renewal fee required for a license certificate to engage in the business of house trailer dealer or trailer dealer, as the case may be, is twenty-five dollars. This fee also entitles the licensee to four dealer's special plates which shall be known as Class D-T/R special plates. Additional Class D-T/R special plates shall be issued to any licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D-T/R special plate.

(e) The annual renewal fee required for a license certificate to engage in the business of recreational vehicle dealer is one hundred dollars. This fee shall also entitle the licensee to four dealer special plates which shall be known as Class D-R/V special plates. Additional Class D-R/V special plates shall be
issued to any licensee upon application therefor on a form prescribed by the commissioner for such purpose on the payment of a fee of twenty-five dollars for each additional Class D-R/V special plate.

(f) The annual renewal fee required for a license certificate to engage in the business of motorcycle dealer is ten dollars. This fee shall also entitle the licensee to two dealer’s special plates which shall be known as Class F special plates. Additional Class F special plates shall be issued to any dealer upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class F special plate.

(g) The annual renewal fee required for a license certificate to engage in the business of wrecker/dismantler/rebuilder is fifteen dollars. Upon payment of the fee for the license certificate, a licensee is entitled to up to four special license plates which shall be known as Class WD special plates. The plates shall be issued to any licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of twenty-five dollars for each plate. The plate issued under the provisions of this subsection shall have the words “Towing Only” affixed thereon. A wrecker/dismantler/rebuilder is entitled to one special plate known as a Class WD/Demo special plate upon payment of a twenty-five dollar fee. This plate shall only be used for demonstrating rebuilt automobiles owned by the wrecker/dismantler/rebuilder.

(h) All of the special plates provided for in this section shall be of such form and design and contain such other distinguishing marks or characteristics as the commissioner may prescribe.

§17A-6-13. Use of special plates; records to be maintained by dealer.

(a) The Class D special plates and the Class D-U/C special plates authorized in this article may be used for any purpose on any motor vehicle owned by the dealer to whom issued and which is being operated with his or her knowledge and consent and not otherwise: Provided, That under no circumstances whatever may a Class D special plate or Class D-U/C special
7 plate be used on any work or service vehicle owned by a dealer,  
8 on any vehicle owned by a dealer and offered for hire or lease,  
9 or on any vehicle which has been sold by a dealer to a cus-  
tomer: Provided, however, That a dealer is authorized to use a  
Class D or Class D-U/C special plate on no more than one  
courtesy vehicle per dealership: Provided further, That a Class  
D licensee is authorized to use a Class D special plate on no  
more than one Class A type pickup truck or van which is  
is specifically identified as a parts truck for the Class D licensee  
and which is used exclusively for the transportation of parts for  
the dealership.

(b) Under no circumstances whatever may a Class D-T/R  
special plate be used for the purpose of operating a motor  
vehicle upon the streets and highways, or on any house trailer  
or other trailer owned by a dealer and offered for hire or lease,  
or on any house trailer or other trailer which has been sold by  
a dealer to a customer: Provided, That notwithstanding the sale  
or any provision of this code to the contrary, a Class D-T/R  
special plate may be used in moving a house trailer sold by a  
house trailer dealer to a customer for one trip only from the  
house trailer dealer’s established place of business to a place  
designated by the customer.

(c) Under no circumstances whatever may a Class D-R/V  
special plate be used for the purpose of operating a motor  
vehicle upon the streets and highways, or on any recreational  
vehicle owned by a dealer and offered for hire or lease, or on  
any recreational vehicle which has been sold by a dealer to a  
customer: Provided, That notwithstanding any provision of this  
code to the contrary, a Class D-R/V special plate may be used  
upon the streets and highways for demonstration purposes only  
on those recreational vehicles that are subject to registration  
under article three of this chapter.

(d) Under no circumstances whatever may a Class F special  
plate be used for the purpose of operating any type of motor  
vehicle other than a motorcycle on the streets and highways, or  
on a motorcycle owned by a dealer and offered for hire or lease,  
or on any motorcycle which has been sold by a dealer to a  
customer.
(e) Under no circumstances whatever may a special plate authorized under the provisions of this section be subcontracted, brokered, leased or rented.

(f) Every dealer entitled to and issued a special plate or plates under the provisions of this article shall keep a written record of the salesman, mechanic, employee, agent, officer or other person to whom a special plate or plates have been assigned by the dealer. Every record shall be open to inspection by the commissioner or his or her representatives or any law-enforcement officer.

CHAPTER 188

(S. B. 540 — By Senators Dittmar, Plymale, Love, Bowman, Unger, Helmick, Ross and Kessler)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-a, relating to recognizing certain automobile dealer practices as proper.

Be it enacted by the Legislature of West Virginia:

That article six, chapter seventeen-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 seventeen-a, to read as follows:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS, ETC.

§17A-6-17a. Approved practices.

Notwithstanding any other provision of this code, a motor vehicle dealer may, consistent with applicable federal law and regulations, advance money to retire an amount owed against a motor vehicle used as a trade-in and finance repayment of that money in a retail installment contract.
AN ACT to amend and reenact section four, article eight, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the unlawful taking of a vehicle; providing that second or subsequent violations are felonies; and providing enhanced penalties for second and subsequent convictions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. SPECIAL ANTITHEFT LAWS.

§17A-8-4. Unlawful taking of vehicle.

(a) Any person who drives a vehicle, not his or her own, without consent of the owner thereof, and with intent temporarily to deprive said owner of his or her possession of such vehicle, without intent to steal the same, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any such unauthorized taking or driving, is guilty of a misdemeanor.

(b) Any person violating the provisions of this section is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred
15 dollars, or confined in the county or regional jail not more than
16 six months, or both; for the second offense, is guilty of a felony
17 and, upon conviction thereof, shall be fined not more than three
18 thousand dollars, or imprisoned in a state correctional facility
19 for not less than one nor more than three years, or imprisoned
20 in a regional jail for not more than one year, or both fined and
21 imprisoned; for third or subsequent offenses, is guilty of a
22 felony and, upon conviction thereof, shall be fined not more
23 than five thousand dollars, or imprisoned in a state correctional
24 facility for not less than one nor more than three years or both.

CHAPTER 190

(Com. Sub. for H. B. 2425 — By Delegates Michael,
Martin, Campbell, Willia and Coleman)

AN ACT to amend and reenact sections one and three, article ten,
chapter seventeen-a of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to raising the
maximum gross weight limit for farm trucks from sixty-four
thousand pounds to eighty thousand pounds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-1. Classification of vehicles for purpose of registration.
§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

§17A-10-1. Classification of vehicles for purpose of registration.

1 Vehicles subject to registration under the provisions of this
2 chapter shall be placed in the following classes for the purpose
3 of registration:
Class A. Motor vehicles of passenger type and trucks with a gross weight of not more than eight thousand pounds;

Class B. Motor vehicles designated as trucks with a gross weight of more than eight thousand pounds, truck tractors or road tractors;

Class C. All trailers and semitrailers, except house trailers and trailers or semitrailers designed to be drawn by Class A motor vehicles and having a gross weight of less than two thousand pounds;

Class G. Motorcycles and parking enforcement vehicles;

Class H. Motor vehicles operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the public service commission;

Class J. Motor vehicles operated for transportation of persons for compensation by common carriers, not running over a regular route or between fixed termini;

Class M. Mobile equipment as defined in subdivision (oo), section one, article one of this chapter;

Class R. House trailers;

Class T. Trailers or semitrailers of a type designed to be drawn by Class A vehicles and having a gross weight of less than two thousand pounds; and

Class Farm Truck. Motor vehicles designated as trucks having a minimum gross weight of more than eight thousand pounds and a maximum gross weight of eighty thousand pounds, used exclusively in the conduct of a farming business, engaged in the production of agricultural products by means of: (a) The planting, cultivation and harvesting of agricultural, horticultural, vegetable or other products of the soil; or (b) the raising, feeding and care of livestock, poultry, bees and dairy cattle. A farm truck may be used only for the transportation of agricultural products produced by the owner of the truck, for the transportation of agricultural supplies used in the production or for private passenger use.
§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

The following registration fees for the classes indicated shall be paid to the division for the registration of vehicles subject to registration under this chapter when equipped with pneumatic tires:

(a) Registration fees for the following classes shall be paid to the division annually:

1. Class A. — The registration fee for all motor vehicles of this class is twenty-eight dollars and fifty cents: Provided, That the registration fees and any other fees required by this chapter for Class A vehicles under the optional biennial staggered registration system shall be multiplied by two and paid biennially to the division.

No license fee may be charged for vehicles owned by churches, or by trustees for churches, which are regularly used for transporting parishioners to and from church services. Notwithstanding the exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

(2) Class B. — The registration fee for all motor vehicles of this class is as follows:

(A) For declared gross weights of eight thousand one pounds to sixteen thousand pounds — twenty-eight dollars plus five dollars for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds eight thousand pounds.

(B) For declared gross weights greater than sixteen thousand pounds, but less than fifty-five thousand pounds — seventy-eight dollars and fifty cents plus ten dollars for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds sixteen thousand pounds.

(C) For declared gross weights of fifty-five thousand pounds or more — seven hundred thirty-seven dollars and fifty
cents plus fifteen dollars and seventy-five cents for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds fifty-five thousand pounds.

(3) Class G. — The registration fee for each motorcycle or parking enforcement vehicle is eight dollars.

(4) Class H. — The registration fee for all vehicles for this class operating entirely within the state is five dollars; and for vehicles engaged in interstate transportation of persons, the registration fee is the amount of the fees provided by this section for Class B, reduced by the amount that the mileage of the vehicles operated in states other than West Virginia bears to the total mileage operated by the vehicles in all states under a formula to be established by the division of motor vehicles.

(5) Class J. — The registration fee for all motor vehicles of this class is eighty-five dollars. Ambulances and hearses used exclusively as ambulances and hearses are exempt from the special fees set forth in this section.

(6) Class M. — The registration fee for all vehicles of this class is seventeen dollars and fifty cents.

(7) Class farm truck. — The registration fee for all motor vehicles of this class is as follows:

(A) For farm trucks of declared gross weights of eight thousand one pounds to sixteen thousand pounds — thirty dollars.

(B) For farm trucks of declared gross weights of sixteen thousand one pounds to twenty-two thousand pounds — sixty dollars.

(C) For farm trucks of declared gross weights of twenty-two thousand one pounds to twenty-eight thousand pounds — ninety dollars.

(D) For farm trucks of declared gross weights of twenty-eight thousand one pounds to thirty-four thousand pounds — one hundred fifteen dollars.
(E) For farm trucks of declared gross weights of thirty-four thousand one pounds to forty-four thousand pounds — one hundred sixty dollars.

(F) For farm trucks of declared gross weights of forty-four thousand one pounds to fifty-four thousand pounds — two hundred five dollars.

(G) For farm trucks of declared gross weights of fifty-four thousand one pounds to eighty thousand pounds — two hundred fifty dollars: Provided, That the provisions of subsection (a) section eight, article one, chapter seventeen-e do not apply if the vehicle exceeds sixty-four thousand pounds and is a truck tractor or road tractor.

(b) Registration fees for the following classes shall be paid to the division for a maximum period of three years, or portion of a year based on the number of years remaining in the three-year period designated by the commissioner:

(1) Class R. — The annual registration fee for all vehicles of this class is twelve dollars.

(2) Class T. — The annual registration fee for all vehicles of this class is eight dollars.

(c) The fees paid to the division for a multiyear registration provided for by this chapter shall be the same as the annual registration fee established by this section and any other fee required by this chapter multiplied by the number of years for which the registration is issued.

(d) The registration fee for all Class C vehicles is fifty dollars. On or before the first day of July, two thousand, all Class C trailers shall be registered for the duration of the owner’s interest in the trailer and do not expire until either sold or otherwise permanently removed from the service of the owner.
AN ACT to amend and reenact sections one and six, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing the division of motor vehicles to add an optional classification on driver’s license for diabetics; and eliminating the jail penalty for driving a motor vehicle without possessing a valid driver’s license.

Be it enacted by the Legislature of West Virginia:

That sections one and six, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

*§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

1 (a) No person, except those hereinafter expressly exempted,
2 may drive any motor vehicle upon a street or highway in this
3 state or upon any subdivision street, as used in article twenty-
4 four, chapter eight of this code, when the use of such subdivi-
5 sion street is generally used by the public unless the person has
6 a valid driver’s license under the provisions of this code for the
7 type or class of vehicle being driven.

* Clerk’s Note: This section was also amended by HB 2295 (Chapter 180), which passed prior to this act, and SB 497 (Chapter 192), which passed subsequent to this act.
Any person licensed to operate a motor vehicle as provided in this code may exercise the privilege thereby granted as provided in this code and, except as otherwise provided by law, shall not be required to obtain any other license to exercise such privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver’s license, shall indicate on the license the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with the provisions of this code, federal law or rule.

(c) Driver’s licenses issued by the division shall be classified in the following manner:

(1) Class A, B or C license shall be issued to those persons eighteen years of age or older with two years driving experience and who have qualified for the commercial driver’s license established by chapter seventeen-e of this code and the federal Commercial Motor Vehicle Safety Act of 1986, Title XII of public law 99870 and subsequent rules, and have paid the required fee.

(2) Class D license shall be issued to those persons eighteen years and older with one year driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purposes of the regulation of the operation of a motor vehicle, wherever the term chauffeur’s license is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: Provided, That anyone who is not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle which is registered or which is required to be registered as a Class A motor vehicle as that term is defined in section one, article ten, chapter seventeen-a of this code with a gross vehicle weight rating of less than eight
thousand one pounds, is not required to obtain a Class D license.

(3) Class E license shall be issued to those persons who have qualified under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation.

(4) Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided for by this chapter and have paid the required fee, but who do not possess a Class A, B, C and D or E driver's license.

(5) All licenses issued under this section may contain information designating the licensee as a diabetic, if the licensee requests this information to be on the license.

(d) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of such subdivision street is generally used by the public unless the person has a valid motorcycle license or a valid license which has been endorsed under section seven-b of this article for motorcycle operation or has a valid motorcycle instruction permit.

(e) (1) A nonoperator identification card may be issued to any person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) Does not have a valid driver's license;

(C) Has reached the age of sixteen years;

(D) Has paid the required fee of ten dollars: Provided, That such fee is not required if the applicant is sixty-five years or older or is legally blind; and
(E) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The nondriver identification card shall contain the same information as a driver’s license except that such identification card shall be clearly marked as identification card. The identification card shall expire every four years. It may be renewed on application and payment of the fee required by this section.

(A) After the thirtieth day of June, one thousand nine hundred ninety-six, every identification card issued to persons who have attained their twenty-first birthday shall expire on the last day of the month in which the applicant’s birthday occurs in those years in which the applicant’s age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years nor more than seven years and such identification card shall be renewed in the month in which the applicant’s birthday occurs and shall be valid for a period of five years expiring in the month in which the applicant’s birthday occurs and in a year in which the applicant’s age is evenly divisible by five.

(B) Every identification card issued to persons who have not attained their twenty-first birthday shall expire on the last day of the month in the year in which the applicant attains the age of twenty-one years.

(3) The identification card shall be surrendered to the division when the holder is issued a driver’s license. The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(f) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction, shall be fined not more than five hundred dollars, or confined in the county or regional jail not more than six months, or both.
§17B-2-6. Application for license or instruction permit; fee to accompany application.

1 Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the division. Every application shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of sixty days from the date of application, except that no applicant may be examined twice within a period of one week.

2 Every said application shall state the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been a licensed driver, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked within the five years next preceding the date of application, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation or refusal, whether the applicant desires a notation on the drivers license indicating that the applicant is a diabetic, and such other pertinent information as the commissioner may require.

CHAPTER 192

(Com. Sub. for S. B. 497 — By Senators Craigo, Anderson, Bailey, Ball, Boisey, Chafin, Deem, Dittmar, Edgell, Fanning, Helmick, Hunter, Jackson, Kessler, Love, McCabe, McKenzie, Minard, Minear, Mitchell, Oliverio, Plymale, Prezioso, Redd, Ross, Schoonover, Sharpe, Snyder, Sprouse, Unger, Walker, Wooton and Tomblin, Mr. President)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the expiration date of driver's licenses; and allowing the commissioner of the
division of motor vehicles to change the date that a driver’s license expires to the driver’s birthday, and providing for lowering the age for nondriver’s identification cards.

Be it enacted by the Legislature of West Virginia:

That sections one and twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

*§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

(a) No person, except those hereinafter expressly exempted, may drive any motor vehicle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of such subdivision street is generally used by the public unless the person has a valid driver’s license under the provisions of this code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided in this code may exercise the privilege thereby granted as provided in this code and, except as otherwise provided by law, shall not be required to obtain any other license to exercise such privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver’s license, shall indicate on the license the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with the provisions of this code, federal law or rule.

(c) Driver’s licenses issued by the division shall be classified in the following manner:

* Clerk’s Note: This section was also amended by HB 2274 (Chapter 191), and HB 2295 (Chapter 180), which passed prior to this act.
(1) Class A, B or C license shall be issued to those persons eighteen years of age or older with two years driving experience and who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal Commercial Motor Vehicle Safety Act of 1986, Title XII of public law 99-570 and subsequent rules, and have paid the required fee.

(2) Class D license shall be issued to those persons eighteen years and older with one year driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purposes of the regulation of the operation of a motor vehicle, wherever the term chauffeur's license is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: Provided, That anyone who is not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle which is registered or which is required to be registered as a Class A motor vehicle as that term is defined in section one, article ten, chapter seventeen-a of this code with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) Class E license shall be issued to those persons who have qualified under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation.

(4) Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided for by this chapter and have paid the required fee, but who do not possess a Class A, B, C and D or E driver's license.
(5) All licenses issued under this section may contain information designating the licensee as a diabetic, if the licensee requests this information on the license.

(d) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of such subdivision street is generally used by the public unless the person has a valid motorcycle license or a valid license which has been endorsed under section seven-b of this article for motorcycle operation or has a valid motorcycle instruction permit.

(e) (1) A nonoperator identification card may be issued to any person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) Does not have a valid driver's license;

(C) Has reached the age of two years. The division may also issue a nonoperator identification card to a person under the age of two years for good cause shown;

(D) Has paid the required fee of two dollars and fifty cents per year for each year the identification card is issued to be valid: Provided, That such fee is not required if the applicant is sixty-five years or older or is legally blind; and

(E) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The nondriver identification card shall contain the same information as a driver's license except that such identification card shall be clearly marked as identification card. However, the division may issue an identification card with less information to persons under the age of sixteen. It may be renewed on application and payment of the fee required by this section.
(A) Every identification card issued to persons who have attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in which the applicant’s birthday occurs in those years in which the applicant’s age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years nor more than seven years and shall be valid for a period of five years expiring in the month in which the applicant’s birthday occurs and in a year in which the applicant’s age is evenly divisible by five.

(B) Every identification card issued to persons who have not attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in the year in which the applicant attains the age of twenty-one years.

(C) Every identification card issued to persons under the age of sixteen shall expire on the day of the month designated by the commissioner in which the applicant’s birthday occurs and shall be issued for a period of two years.

(3) The identification card shall be surrendered to the division when the holder is issued a driver’s license. The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(f) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction, shall be fined not more than five hundred dollars, or confined in the county or regional jail not more than six months, or both.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

(a) Every driver’s license shall expire five years from the date of its issuance.

(b)(1) Every driver’s license issued to persons who have attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in which the applicant’s
birthday occurs in those years in which the applicant’s age is evenly divisible by five. Except as provided in the following subdivisions, no driver’s license may be issued for less than three years nor more than seven years and shall be valid for a period of five years, expiring in the month in which the applicant’s birthday occurs and in a year in which the applicant’s age is evenly divisible by five.

(2) Every driver’s license issued to persons who have not attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in the year in which the applicant attains the age of twenty-one years.

(3) The driver’s license of any person in the armed forces is extended for a period of six months from the date the person is separated under honorable circumstances from active duty in the armed forces.

(4) The commissioner may change the date that a driver’s license expires from the last day of the month in those years specified in subdivisions (1) and (2) of this subsection to the day of the month in which the applicant’s birthday occurs in those years. If the commissioner changes the expiration date, the change may only affect new licenses and renewed licenses.

(c) A person who allows his or her driver’s license to expire may apply to the division for renewal of the license. Application shall be made upon a form furnished by the division and shall be accompanied by payment of the fee required by section eight of this article plus an additional fee of five dollars. The commissioner shall determine whether the person qualifies for a renewed license and may, in the commissioner’s discretion, renew any expired license without examination of the applicant.

(d) Each renewal of a driver’s license shall contain a new color photograph of the licensee. By first class mail to the address last known to the division, the commissioner shall notify each person who holds a valid driver’s license of the expiration date of the license. The notice shall be mailed at least thirty days prior to the expiration date of the license and shall include a renewal application form.
AN ACT to amend article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to exempting certain railroad employees from the duty to produce a driver’s license while operating a train and requiring that the crew members produce photo identification issued by the railroad employer or other state or federal authority.

Be it enacted by the Legislature of West Virginia:

That article two, chapter seventeen-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 nine-a, to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-9a. Exemptions of certain railroad workers.

1 Notwithstanding any provision of this code to the contrary, in any circumstance involving an accident or alleged violation of law in which the engineer or any other crew member of any train is detained by any law-enforcement officer, the engineer and all crew members shall not be required to furnish a driver’s license issued by the division of motor vehicles: Provided, That the engineer and all crew members shall be required to produce photo identification issued by the railroad employer or any other state or federal authority other than the division of motor vehicles upon request of any law-enforcement officer during the course of investigating an accident or alleged violation of law involving the operation of a train.
AN ACT to amend and reenact section three, article four, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to altering the criminal and administrative penalties for driving a motor vehicle while the operator’s license is suspended or revoked.

Be it enacted by the Legislature of West Virginia:

That section three, article four, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. VIOLATIONS OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

(a) Except as otherwise provided in subsection (b) or (d) of this section, any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended or revoked by this state or any other jurisdiction is, for the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of ten days and, in addition to the mandatory jail
sentence, shall be fined not less than one hundred dollars nor
more than five hundred dollars; for the third or any subsequent
offense, the person is guilty of a misdemeanor and, upon
conviction thereof, shall be confined in jail for six months and,
in addition to the mandatory jail sentence, shall be fined not
less than one hundred fifty dollars nor more than five hundred
dollars.

(b) Any person who drives a motor vehicle on any public
highway of this state at a time when his or her privilege to do
so has been lawfully revoked for driving under the influence of
alcohol, controlled substances or other drugs, or for driving
while having an alcoholic concentration in his or her blood of
ten hundredths of one percent or more, by weight, or for
refusing to take a secondary chemical test of blood alcohol
content, is, for the first offense, guilty of a misdemeanor and,
upon conviction thereof, shall be confined in jail for six months
and in addition to the mandatory jail sentence, shall be fined not
less than one hundred dollars nor more than five hundred
dollars; for the second offense, the person is guilty of a misde-
meanor and, upon conviction thereof, shall be confined in jail
for a period of one year and, in addition to the mandatory jail
sentence, shall be fined not less than one thousand dollars nor
more than three thousand dollars; for the third or any subse-
quent offense, the person is guilty of a felony and, upon
conviction thereof, shall be imprisoned in the penitentiary for
not less than one year nor more than three years and, in addition
to the mandatory prison sentence, shall be fined not less than
three thousand dollars nor more than five thousand dollars.

(c) Upon receiving a record of the first or subsequent
conviction of any person under subsection (b) of this section
upon a charge of driving a vehicle while the license of such
person was lawfully suspended or revoked, the division shall
extend the period of such suspension or revocation for an
additional period of one year from and after the date such
person would otherwise have been entitled to apply for a new
license. Upon receiving a record of the second or subsequent
conviction of any person under subsection (a) of this section
upon a charge of driving a vehicle while the license of such
person was lawfully suspended or revoked, the division shall extend the period of such suspension or revocation for an additional period of one year from and after the date such person would otherwise have been entitled to apply for a new license.

(d) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours or shall be fined not less than fifty dollars nor more than five hundred dollars, or both.

(e) An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.

CHAPTER 195

(S. B. 703 — By Senators Redd, Wooton, Ball, Dittmar, Hunter, McCabe, Minard, Mitchell, Oliverio, Ross, Snyder, Deem and McKenzie)

[Passed March 10, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixty-four; and to amend article twelve of said chapter by adding thereto a new section, designated section seven-a, all relating to establishing safety requirements for certain vehicles used to transport children; defining “passenger van”; requiring certain warning signs and equipment on passenger vans; establishing requirements for motorists meeting or overtaking passenger vans; and establishing criminal penalties.
Be it enacted by the Legislature of West Virginia:

That article one, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section sixty-four; and that article twelve of said chapter be amended by adding thereto a new section, designated section seven-a, all to read as follows:

Article
  1. Words and Phrases Defined.
  12. Special Stops Required.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-64. Passenger van.

"Passenger van" means any van or other motor vehicle owned by any agency, business or other legal entity and operated for the purpose of transportation of children under the age of eighteen years, other than a van utilized for private use, taxicab, bus or school bus. Passenger vans include, but are not limited to, vehicles used by daycare centers, after-school centers and nursery schools.

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7a. Signs and warning lights or alternative warning devices upon passenger vans; passing passenger van; criminal penalties.

(a) Every passenger van used for the transportation of children, as defined in section sixty-four, article one of this chapter shall bear upon the front and rear thereof a plainly visible sign containing the warning "Caution: Loading and Unloading Passengers" in letters not less than six inches in height. Every such passenger van shall be equipped with either flashing warning signal lights as are contemplated and referred to in section eight of this article, or a red caution flag which the driver or some other adult must use by exiting the passenger van and displaying while assisting in the loading or unloading of passengers. Such vehicles may also be equipped with a white flashing strobotron warning light that meets the requirements set forth in subsection (e), section twenty-six, article fifteen of this chapter.
(b) The driver of a vehicle upon meeting or overtaking from any direction any passenger van which has stopped for the purpose of loading or unloading passengers shall stop his or her vehicle before reaching the passenger van when there is in operation on the passenger van flashing warning signal lights or when an adult is outside the passenger van with a red caution flag and assisting with the loading or unloading of passengers. The driver of a vehicle may not proceed until he or she is signaled by the passenger van driver to proceed, the passenger van flashing signal lights are no longer actuated, or the passenger van resumes motion. This section applies wherever the passenger van is loading or unloading children on any street, highway, parking lot, private road or driveway: Provided, That the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a passenger van which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway. Any driver acting in violation of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than two hundred dollars, or imprisoned in the county or regional jail not more than six months, or both fined and imprisoned. If the identity of the driver cannot be ascertained, then any owner or lessee of the vehicle in violation of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five nor more than one hundred dollars: Provided, however, That the conviction may not subject the owner or lessee to further administrative or other penalties for the offense, notwithstanding other provisions of this code to the contrary.

CHAPTER 196

(Com. Sub. for H. B. 2253 — By Delegate Warner)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections six and seven, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to revising accident reporting requirements.

Be it enacted by the Legislature of West Virginia:

That sections six and seven, article four, chapter seventeen-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. ACCIDENTS.

§17C-4-6. Immediate reports of accidents.

The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of five hundred dollars or more shall immediately by the quickest means of communication, whether oral or written, give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the West Virginia state police.

§17C-4-7. Written reports of accidents.

Every law-enforcement officer who, in the regular course of duty, investigates a motor vehicle accident occurring on the public highways of this state resulting in bodily injury to or death of any person or total property damage to an apparent extent of five hundred dollars or more shall, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, within twenty-four hours after completing such investigation, forward a written report of such accident to the division. The division shall prepare a form for such accident report and, after approval of such form by the commissioner, the superintendent of the West Virginia state police and the commissioner of highways, shall supply copies of such form to police departments, sheriffs and other appropriate law-enforcement agencies. Every accident report required under the provisions of this section shall be made on such form.
AN ACT to amend and reenact section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the use of strobotron warning lights on public transit vehicles and vehicles hauling solid waste.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.


(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying other than a white or amber light visible from directly in front of the center thereof except as authorized by subsection (d) of this section.

(c) Except as authorized in subsections (d) and (f) of this section and authorized in section nineteen of this article,
flashing lights are prohibited on motor vehicles: Provided, That any vehicle as a means for indicating right or left turn, or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this chapter, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.

(2) Except for standard vehicle equipment authorized by section nineteen of this article, red flashing warning lights are restricted to ambulances; firefighting vehicles; hazardous material response vehicles; industrial fire brigade vehicles; school buses; Class A vehicles, as defined by section one, article ten, chapter seventeen-a of this code, of those firefighters who are authorized by their fire chiefs to have the lights; Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights; and Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights. Red flashing warning lights attached to the Class A vehicles shall be operated only when responding to or engaged in handling an emergency requiring the attention of the firefighters, members of the ambulance services, or chartered rescue squads.

(3) The use of red flashing warning lights shall be authorized as follows:

(A) Authorization for all ambulances shall be designated by the department of health and human resources and the sheriff of the county of residence.

(B) Authorization for all fire department vehicles shall be designated by the fire chief and the state fire marshal’s office.
(C) Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the chief of the fire department and the state fire marshal's office.

(D) Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the department of health and human resources.

(E) Authorization for school buses shall be designated as set out in section twelve, article fourteen, chapter seventeen-c.

(F) Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the state fire marshal’s office.

(G) Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A vehicles shall be designated by their chief official, the department of health and human resources and the sheriff of the county of residence.

(H) Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence and the department of health and human resources.

(I) Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire department, ambulance services or duly chartered rescue squads shall be designated by their respective chiefs.

(4) Yellow flashing warning lights are restricted to the following:

(A) All other emergency vehicles, including tow trucks and wreckers, authorized by this chapter and by section twenty-seven of this article;

(B) Postal service vehicles and rural mail carriers, as authorized in section nineteen of this article;

(C) Rural newspaper delivery vehicles;
(D) Flag car services;

(E) Vehicles providing road service to disabled vehicles;

(F) Service vehicles of a public service corporation;

(G) Snow removal equipment; and

(H) School buses.

(5) The use of yellow flashing warning lights shall be authorized as follows:

(A) Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation and postal service vehicles shall be designated by the sheriff of the county of residence.

(B) Authorization for snow removal equipment shall be designated by the commissioner of the division of highways.

(C) Authorization for school buses shall be designated as set out in section twelve, article fourteen, chapter seventeen-c.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an organization receiving funding from the state or federal transit administration for the purpose of providing general public transportation, or hauling solid waste may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle, or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light three hundred sixty degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

(f) It shall be unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights.
CHAPTER 198

(Com. Sub. for H. B. 2743 — By Delegates Michael and Warner)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for special overweight permits for vehicles hauling containerized freight bound to or from a seaport or inland waterway port.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-11. Permits for excess size and weight.

(a) The commissioner of highways may, in his or her discretion, upon application in writing and good cause being shown therefor issue a special permit in writing authorizing: (1) The applicant, in crossing any highway of this state, to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether the operation be continuous or not, provided the applicant shall agree to compensate the commissioner of highways for all damages or expenses incurred in connection with the crossing; (2) the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, except that a permit shall not be issued for continuous operation of a vehicle not in conformity with the provisions of this article relating to weight limitations; and (3) the applicant to move or
operate, for limited or continuous operation, a vehicle hauling containerized cargo in a sealed, seagoing container to or from a seaport or inland waterway port that has or will be transported by marine shipment where the vehicle is not, as a result of hauling the container, in conformity with the provisions of this article relating to weight limitations, upon the conditions that:

(A) The container be hauled only on the roadways and highways designated by the commissioner of highways; (B) the contents of the container are not changed from the time it is loaded by the consignor or the consignor’s agent to the time it is delivered to the consignee or the consignee’s agent; and (C) such additional conditions as the commissioner may impose to otherwise ensure compliance with the provisions of this chapter.

(b) The application for any permit shall specifically describe the vehicle or vehicles and load to be operated or moved along or across the highway and the particular highway or crossing of the highway for which permit to operate is requested, and whether the permit is requested for a single trip or for a continuous operation.

(c) The commissioner of highways is authorized to issue or withhold a permit at his or her discretion; or, if the permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on or across the highways indicated, or otherwise to limit or prescribe conditions of operation of the vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surface, or structures, and may require the undertaking, bond or other security as may be considered necessary to compensate for any injury to any roadway structure and to specify the type, number and the location for escort vehicles for any vehicle.

The commissioner may charge a fee not to exceed five dollars for the issuance of a permit for a mobile home and a reasonable fee for the issuance of a permit for any other vehicle under the provisions of this section to pay the administrative costs thereof.
(d) Every permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of the commissioner of highways granting the permit, and no person shall violate any of the terms or conditions of the special permit.

CHAPTER 199

(S. B. 150 — By Senators Wooton, Ball, Dittmar, Fanning, Hunter, Kessler, McCabe, Mitchell, Oliverio, Redd, Ross, Snyder and McKenzie)

[Passed February 18, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-a, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to investigation by duly authorized law-enforcement officer to include inquiry regarding required security; duty of courts to notify division of motor vehicles of person found not to have security; and time limits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice by officer or court to division of motor vehicles.

At the time of investigation of a motor vehicle offense or accident in this state by the department of public safety or other law-enforcement agency or when a vehicle is stopped by a law-enforcement officer for reasonable cause, the officer of such agency making such investigation shall inquire of the operator of any motor vehicle involved as to the existence upon such
vehicle or vehicles of the proof of insurance or other security
required by the provisions of this code and upon a finding by
such law-enforcement agency, officer or agent thereof that the
security required by the provisions of this article is not in effect,
as to any vehicle, he or she shall notify the department of motor
vehicles of such finding within five days if no citation requiring
a court appearance is issued: Provided, That such law-enforce-
ment officer or agent shall not stop vehicles solely to inquire as
to the certificate of insurance. A defendant, who is charged with
a traffic offense that requires an appearance in court, shall
present the court at the time of his or her appearance or subse-
quent appearance with proof that the defendant had security at
the time of the traffic offenses as required by this article. If, as
a result of the defendant’s failure to show proof, the court
determines that the defendant has violated this article, it shall
notify the department of motor vehicles within five days. For
purposes of this section, presentation of a certificate of insur-
ance reflecting insurance to be in effect on the date in question
shall constitute proof of surety.

CHAPTER 200

(Com. Sub. for S. B. 222 — By Senators Ross, Kessler and Anderson)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]
alcohol-related offenses; and providing for procedure upon certain arrests.

Be it enacted by the Legislature of West Virginia:

That sections three, seven, twelve, thirteen, fourteen and fifteen, article one, chapter seventeen-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. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.
§17E-1-7. Commercial driver's license required; disqualification for driving without valid license.
§17E-1-12. Classifications, endorsements and restrictions.
§17E-1-14. Commercial drivers prohibited from driving with blood alcohol concentration of four hundredths of one percent or more; refusal of preliminary breath test to determine alcohol content of blood; criminal penalties.
§17E-1-15. Implied consent requirements for commercial motor vehicle drivers; disqualification for driving with blood alcohol concentration of four hundredths of one percent or more, by weight.

§17E-1-3. Definitions.

Notwithstanding any other provision of this code, the following definitions apply to this article:

"Alcohol" means:

(a) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;

(b) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(c) Distilled spirits or that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or
(d) Wine of not less than one half of one percent of alcohol by volume.

"Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath; or

(c) The number of grams of alcohol per sixty-seven milliliters of urine.

"Commercial driver license" means a license issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

"Commercial driver license information system" is the information system established pursuant to the federal commercial motor vehicle safety act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

"Commercial driver instruction permit" means a permit issued pursuant to subsection (d), section nine of this article.

"Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross vehicle weight rating as determined by federal regulation;

(b) If the vehicle is designed to transport sixteen or more passengers, including the driver; or

(c) If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. part 172, sub-part F.

"Commissioner" means the commissioner of motor vehicles of this state.

"Controlled substance" means any substance so classified under the provisions of chapter sixty-a of this code (uniform
controlled substances act) and includes all substances listed on
Schedules I through V, article two of said chapter sixty-a, as
they may be revised from time to time.

“Conviction” means the final judgment in a judicial or
administrative proceeding or a verdict or finding of guilty, a
plea of guilty, a plea of nolo contendere or a forfeiture of bond
or collateral upon a charge of a disqualifying offense, as a result
of proceedings upon any violation of the requirement of this
article.

“Division” means the division of motor vehicles.

“Disqualification” means a prohibition against driving a
commercial motor vehicle.

“Drive” means to drive, operate or be in physical control of
a motor vehicle in any place open to the general public for
purposes of vehicular traffic. For purposes of sections twelve,
thirteen and fourteen of this article “drive” includes operation
or physical control of a motor vehicle anywhere in this state.

“Driver” means any person who drives, operates or is in
physical control of a commercial motor vehicle, in any place
open to the general public for purposes of vehicular traffic, or
who is required to hold a commercial driver license.

“Driver license” means a license issued by a state to an
individual which authorizes the individual to drive a motor
vehicle of a specific class.

“Employee” means a person who is employed by an
employer to drive a commercial motor vehicle, including
independent contractors. An employee who is self-employed as
a commercial motor vehicle driver must comply with both the
requirements of this article pertaining to employees and
employers.

“Employer” means any person, including the United States,
a state, or a political subdivision of a state, who owns or leases
a commercial motor vehicle, or assigns a person to drive a
commercial motor vehicle.
“Farm vehicle” includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to such farms or orchards to be used thereon.

“Farmer” includes owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits, who is at least eighteen years of age with two years licensed driving experience.

“Farmer vehicle driver” means the person employed and designated by the “farmer” to drive a “farm vehicle” as long as driving is not his sole or principal function on the farm, who is at least eighteen years of age with two years licensed driving experience.

“Gross combination weight rating (GCWR)” means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

“Gross vehicle weight rating (GVWR)” means the value specified by the manufacturer as the loaded weight of a single vehicle. In the absence of a value specified by the manufacturer the GVWR will be determined by the total weight of the vehicle and any load thereon.

“Hazardous materials” has the meaning as that found in the Hazardous Materials Transportation Act (49 U.S.C. 5101 et seq. (1998)).

“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.
"Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle as a result of a determination by a federal agency or the public service commission, pursuant to chapter twenty-four-a of this code, that: (a) The continued use of a commercial motor vehicle may result in death, serious injury or severe personal injury; or (b) the continued actions by the driver of a commercial motor vehicle poses an imminent hazard to public safety.

"Violation of an out-of-service order" means: (a) The operation of a commercial motor vehicle during the period the driver was placed out of service; or (b) the operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.

"Serious traffic violation" means:

(a) Excessive speeding defined as fifteen miles per hour in excess of all posted limits;

(b) Reckless driving as defined in section three, article five, chapter seventeen-c of this code including erratic lane changes and following the vehicle ahead too closely;

(c) A violation of state or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal traffic accident. Vehicle weight and vehicle defects are excluded as serious traffic violations; or

(d) Any other serious violations as may be determined by the U. S. Secretary of Transportation.

"State" means a state of the United States and the District of Columbia.

"Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in 49 C.F.R. Part 171 (1998). However, this definition does not include portable tanks having a rated capacity under one thousand gallons.
“At fault traffic accident” means for the purposes of waiving the road test, a determination, by the official filing the accident report, of fault as evidenced by an indication of contributing circumstances in the accident report.

§17E-1-7. Commercial driver’s license required; disqualification for driving without valid license.

(a) On or after the first day of April, one thousand nine hundred ninety-two, except when driving under a commercial driver’s instruction permit accompanied by the holder of a commercial driver’s license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds a commercial driver’s license and applicable endorsements valid for the vehicle they are driving.

(b) No person may drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled, expired, subject to a disqualification, or in violation of an out-of-service order.

(c) Drivers of a commercial motor vehicle must have a commercial driver’s license in their possession at all times while driving.

(d) The commissioner shall suspend for a period of ninety days the driving privileges of any person who is convicted of operating a commercial motor vehicle without holding a valid commercial driver’s license and the applicable endorsements valid for the vehicle he or she is driving or for any conviction for operating a commercial motor vehicle while disqualified from operating a commercial motor vehicle. Any person not holding a commercial driver’s license who is convicted of an offense that requires disqualification from operating a commercial motor vehicle shall also be disqualified from eligibility for a commercial driver’s license for the same time periods as prescribed in federal law or rule or this chapter for commercial driver’s license holders.

§17E-1-12. Classifications, endorsements and restrictions.

Commercial driver’s licenses may be issued, with the following classifications, endorsements and restrictions; the
holder of a valid commercial driver’s license may drive all
vehicles in the class for which that license is issued, and all
lesser classes of vehicles and vehicles which require an
derendorsement, unless the proper endorsement appears on the
license:

(a) **Classifications.** —

(1) Class A - Any combination of vehicles with a gross
combined vehicle weight rating of twenty-six thousand one
pounds or more, provided the gross vehicle weight rating of the
vehicle(s) being towed is in excess of ten thousand pounds.

(2) Class B - Any single vehicle with a gross vehicle weight
rating of twenty-six thousand one pounds or more, and any such
vehicle towing a vehicle not in excess of ten thousand pounds.

(3) Class C - Any single vehicle or combination vehicle
with a gross vehicle weight rating of less than twenty-six
thousand one pounds or any such vehicle towing a vehicle with
a gross vehicle weight rating not in excess of ten thousand
pounds comprising:

(A) Vehicles designed to transport sixteen or more passen-
gers, including the driver; and

(B) Vehicles used in the transportation of hazardous
materials which requires the vehicle to be placarded under 49
C.F.R., Part 172, sub-part F.

(b) **Endorsements and restrictions.** — The commissioner
upon issuing a commercial driver’s license shall have the
authority to impose such endorsements or restrictions as the
commissioner may determine to be appropriate to assure the
safe operation of a motor vehicle, and to comply with the
federal Motor Vehicle Act of 1986 and federal rules implement-
ing such act.

(c) **Applicant record check.** — Before issuing a commercial
driver’s license, the commissioner must obtain driving record
information through the commercial driver’s license informa-
tion system, the national driver register and from each state in
which the person has been commercially licensed.
(d) Notification of license issuance. — Within ten days after issuing a commercial driver's license, the commissioner shall notify the commercial driver’s license information system of that fact, providing all information required to ensure identification of the person.

(e) Expiration of license. —

(1) Every commercial driver's license issued to persons who have attained their twenty-first birthday shall expire on the last day of the month in which the applicant’s birthday occurs in those years in which the applicant’s age is evenly divisible by five. Except as provided in subdivision (2) of this subsection, no commercial driver's license may be issued for less than three years nor more than seven years and such commercial driver’s license shall be renewed in the month in which the applicant’s birthday occurs and shall be valid for a period of five years, expiring in the month in which the applicant’s birthday occurs and in a year in which the applicant’s age is evenly divisible by five.

(2) Every commercial driver’s license issued to persons who have not attained their twenty-first birthday shall expire on the last day of the month in the year in which the applicant attains the age of twenty-one years.

(3) Commercial driver’s licenses held by any person in the armed forces which expire while that person is on active duty shall remain valid for thirty days from the date on which that person reestablishes residence in West Virginia.

(4) Any person applying to renew a commercial driver’s license which has been expired for two years or more must follow the procedures for an initial issuance of a commercial driver’s license, including the testing provisions.

(f) License renewal procedures. — When applying for renewal of a commercial driver’s license, the applicant must complete the application form and provide updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed.

(a) Disqualification offenses. — Any person is disqualified from driving a commercial motor vehicle for a period of one year if convicted of a first violation of:

(1) Driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(2) Driving a commercial motor vehicle while the person’s alcohol concentration of the person’s blood, breath or urine is four hundredths of one percent or more, by weight;

(3) Leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(4) Using a commercial motor vehicle in the commission of any felony as defined in this article: Provided, That the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance falls under the provisions of subsection (e) of this section;

(5) Refusal to submit to a test to determine the driver’s alcohol concentration while driving a commercial motor vehicle;

(6) Manslaughter or negligent homicide resulting from the operation of a motor vehicle as defined in section five, article three, chapter seventeen-b, and section one, article five, chapter seventeen-c of this code;

(7) Driving while license is suspended or revoked, as defined in section three, article four, chapter seventeen-b of this code;

(8) Perjury or making a false affidavit or statement under oath to the department of motor vehicles, as defined in subsection (4), section five, article three, and section two, article four, chapter seventeen-b of this code.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is
disqualified for a period of not less than three years for a first violation.

(b) A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection (a) of this section, or any combination of those offenses, arising from two or more separate incidents.

(c) The commissioner may issue rules establishing guidelines, including conditions, under which a disqualification for life under subsection (b) of this section may be reduced to a period of not less than ten years.

(d) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance.

(e) A person is disqualified from driving a commercial motor vehicle for a period of sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(f) In addition, in accordance with the provision of 49 C.F.R. §391.15 and §383.15 (1998), a conviction of violating an out-of-service order is a disqualifying offense. For the first offense, the period of disqualification shall be for ninety days. For the second offense within a ten-year period for violations in separate incidents, the period of disqualification shall be for a period of one year. For the third or subsequent offense within a ten-year period for violations in separate incidents, the period of disqualification shall be for a period of three years. If the violation of the out-of-service order occurred while the person was operating a commercial motor vehicle transporting hazardous material required to be placarded under the Hazardous Transportation Act (49 U.S.C. §5101 et seq.) or while operating a motor vehicle designed to transport sixteen or more
passengers including the driver, the period of disqualification for the first offense shall be for one hundred eighty days. For the second or subsequent offense within a ten-year period for violations in separate incidents, the period of disqualification shall be for three years.

(g) A person is disqualified from driving a commercial motor vehicle if he or she has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the commercial driver’s license as provided in article five-a, chapter forty-eight-a of this code and the child support enforcement division has forwarded to the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply with a new or modified order that stayed the suspension and provided for the payment of current support and any arrearage due. A disqualification under this section shall continue until the division has received a court order restoring the license or a certification by the child support enforcement division that the licensee is complying with the original support order or a new or modified order that provides for the payment of current support and any arrearage due.

(h) After suspending, revoking or canceling a commercial driver’s license, the division shall update its records to reflect that action within ten days.

§17E-1-14. Commercial drivers prohibited from driving with blood alcohol concentration of four hundredths of one percent or more; refusal of preliminary breath test to determine alcohol content of blood; criminal penalties.

(a) In addition to any other penalties provided by this code, any person who drives, operates or is in physical control of a commercial motor vehicle while having an alcohol concentration in his or her blood, breath or urine of four hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than twenty-four hours nor more than six months, and shall be
fined not less than one hundred dollars nor more than five
hundred dollars. A person convicted of a second or any subse-
quent offense under the provisions of this subsection shall be
confined in jail for a period of not less than six months nor
more than one year, and the court may, in its discretion, impose
a fine of not less than one thousand dollars nor more than three
thousand dollars.

(b) A person who violates the provisions of subsection (a)
of this section shall be treated in the same manner set forth in
section three, article nineteen, chapter seventeen-c of this code,
as if he or she had been arrested for driving under the influence
of alcohol or of any controlled substance.

(c) In addition to any other penalties provided by this code,
a person who drives, operates or is in physical control of a
commercial motor vehicle having any measurable alcohol in
such person’s system or who refuses to take a preliminary
breath test to determine such person’s blood alcohol content as
provided by section fifteen of this article must be placed out of
service for twenty-four hours by the arresting law-enforcement
officer.

§17E-1-15. Implied consent requirements for commercial motor
vehicle drivers; disqualification for driving with
blood alcohol concentration of four hundredths of
one percent or more, by weight.

(a) A person who drives a commercial motor vehicle within
this state is deemed to have given consent, subject to provisions
of section four, article five, chapter seventeen-c of this code, to
take a test or tests of that person’s blood, breath or urine for the
purpose of determining that person’s alcohol concentration, or
the presence of other drugs.

(b) A test or tests may be administered at the direction of a
law-enforcement officer, who after lawfully stopping or
detaining the commercial motor vehicle driver, has reasonable
cause to believe that driver was driving a commercial motor
vehicle while having alcohol in his or her system.
(c) A person requested to submit to a test as provided in subsection (a) of this section must be warned by the law-enforcement officer requesting the test that a refusal to submit to the test will result in that person being disqualified from operating a commercial motor vehicle under section thirteen or fifteen of this article.

(d) If the person refuses testing, or submits to a test which discloses an alcohol concentration of four hundredths of one percent or more, by weight, that law-enforcement officer must submit a sworn report to the division of motor vehicles certifying that the test was requested pursuant to subsection (a) of this section and that the person refused to submit to testing, or submitted to a test which disclosed an alcohol concentration of four hundredths of one percent or more, by weight.

(e) Upon receipt of the sworn report of a law-enforcement officer submitted under subsection (d) of this section, the commissioner must enter an order disqualifying the driver from driving a commercial motor vehicle for one year.

CHAPTER 201

(Com. Sub. for H. B. 2474 — By Delegates C. White, Campbell, J. Smith, Marshall, Yeager, Ashley and Martin)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to powers of municipalities and providing for the naming or renaming of streets and for consultation with local postal authorities, the division of highways and the directors of county emergency communications centers, to assure uniform, nonduplicative addressing on a permanent basis.

Be it enacted by the Legislature of West Virginia:
That section five, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by: (i) The constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision (1); and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk, but before any such permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any such airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and purpose of such public hearing has been published 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 municipality: *Provided,* That
any such permit so granted shall automatically cease and
terminate in the event of abandonment and nonuse thereof for
the purposes intended for a period of ninety days, and all rights
therein or thereto shall revert to such municipality for its use
and benefit;

(2) To provide for the opening and excavation of streets,
avenues, roads, alleys, ways, sidewalks, crosswalks and public
places belonging to the municipality and regulate the conditions
under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing
or permitting to remain on any street, avenue, road, alley, way,
sidewalk, square or other public place any glass, scrap iron,
nails, tacks, wire, other litter, or any offensive matter or
anything likely to injure the feet of individuals or animals or the
tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys,
ways, sidewalks, crosswalks and public places belonging to the
municipality, including the naming or renaming thereof, and to
consult with local postal authorities, the division of highways
and the directors of county emergency communications centers
to assure uniform, nonduplicative addressing on a permanent
basis;

(5) To regulate the width of streets, avenues and roads, and,
subject to the provisions of article eighteen of this chapter, to
order the sidewalks, footways and crosswalks to be paved,
repaved, curbed or recurbed and kept in good order, free and
clean, by the owners or occupants thereof or of the real property
next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or
discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of
water drains, the drainage of swamps or marshlands and
drainage systems;

(8) To provide for the construction, maintenance and
covering over of watercourses;
(9) To control and administer the waterfront and waterways of the municipality, and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, debris, wastes, ashes, trash and other similar accumulations whether on private or public property;

(11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all other facilities for the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;

(12) To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for such use or consumption, or which may be contaminated or otherwise unsanitary;

(13) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome;

(14) To regulate the keeping of gunpowder and other combustibles;

(15) To make regulations guarding against danger or damage by fire;

(16) To arrest, convict and punish any individual for carrying about his person any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles, or any other dangerous or other deadly weapon of like kind or character;

(17) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any pornographic publications;

(18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house
of ill fame, or for knowingly permitting any house owned by
him or under his control to be kept or used as a house of ill
fame, or for loafing, boarding or loitering in a house of ill fame,
or frequenting same;

(19) To prevent and suppress conduct and practices which
are immoral, disorderly, lewd, obscene and indecent;

(20) To prevent the illegal sale of intoxicating liquors,
drinks, mixtures and preparations;

(21) To arrest, convict and punish any individual for driving
or operating a motor vehicle while intoxicated or under the
influence of liquor, drugs or narcotics;

(22) To arrest, convict and punish any person for gambling
or keeping any gaming tables, commonly called "A, B, C," or
"E, O," table or faro bank or keno table, or table of like kind,
under any denomination, whether the gaming table be played
with cards, dice or otherwise, or any person who shall be a
partner or concerned in interest, in keeping or exhibiting such
table or bank, or keeping or maintaining any gaming house or
place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public
health and safety and to abate or cause to be abated anything
which in the opinion of a majority of the governing body is a
public nuisance;

(24) To license, or for good cause to refuse to license in a
particular case, or in its discretion to prohibit in all cases, the
operation of pool and billiard rooms and the maintaining for
hire of pool and billiard tables notwithstanding the general law
as to state licenses for any such business and the provisions of
section four, article thirteen of this chapter; and when the
municipality, in the exercise of its discretion, shall have refused
to grant a license to operate a pool or billiard room, mandamus
shall not lie to compel such municipality to grant such license
unless it shall clearly appear that the refusal of the municipality
to grant such license is discriminatory or arbitrary; and in the
event that the municipality determines to license any such
business, the municipality shall have plenary power and
authority, and it shall be the duty of its governing body to make
and enforce reasonable ordinances regulating the licensing and
operation of such businesses;

(25) To protect places of divine worship and to preserve
peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or fowls
and to provide for the impounding, sale or destruction of
animals or fowls kept contrary to law or found running at large;

(27) To arrest, convict and punish any person for cruelly,
unnecessarily or needlessly beating, torturing, mutilating,
killing or overloading or overdriving, or willfully depriving of
necessary sustenance, any domestic animal;

(28) To provide for the regular building of houses or other
structures, for the making of division fences by the owners of
adjacent premises and for the drainage of lots by proper drains
and ditches;

(29) To provide for the protection and conservation of
shade or ornamental trees, whether on public or private prop-
erty, and for the removal of trees or limbs of trees in a danger-
ous condition;

(30) To prohibit with or without zoning the location of
occupied house trailers or mobile homes in certain residential
areas;

(31) To regulate the location and placing of signs, bill-
boards, posters, and similar advertising;

(32) To erect, establish, construct, acquire, improve,
maintain and operate a gas system, a waterworks system, an
electric system, or sewer system and sewage treatment and
disposal system, or any combination of the foregoing (subject
to all of the pertinent provisions of articles nineteen and twenty
of this chapter and particularly to the limitations or qualifica-
tions on the right of eminent domain set forth in said articles
nineteen and twenty), within or without the corporate limits of
the municipality, except that the municipality shall not erect
any such system partly without the corporate limits of the
municipality to serve persons already obtaining service from an
existing system of the character proposed, and where such
system is by the municipality erected, or has heretofore been so
erected, partly within and partly without the corporate limits of
the municipality, the municipality shall have the right to lay and
collect charges for service rendered to those served within and
those served without the corporate limits of the municipality,
and to prevent injury to such system or the pollution of the
water thereof and its maintenance in a healthful condition for
public use within the corporate limits of the municipality;

(33) To acquire watersheds, water and riparian rights, plant
sites, rights-of-way and any and all other property and appurte-
nances necessary, appropriate, useful, convenient or incidental
to any such system, waterworks or sewage treatment and
disposal works, as aforesaid, subject to all of the pertinent
provisions of articles nineteen and twenty of this chapter;

(34) To establish, construct, acquire, maintain and operate
and regulate markets, and prescribe the time of holding the
same;

(35) To regulate and provide for the weighing of articles
sold or for sale;

(36) To establish, construct, acquire, maintain and operate
public buildings, municipal buildings or city halls, auditoriums,
arenas, jails, juvenile detention centers or homes, motor vehicle
parking lots, or any other public works;

(37) To establish, construct, acquire, provide, equip,
maintain and operate recreational parks, playgrounds and other
recreational facilities for public use, and in this connection also
to proceed in accordance with the provisions of article two,
chapter ten of this code;

(38) To establish, construct, acquire, maintain and operate
a public library or museum or both for public use;

(39) To provide for the appointment and financial support
of a library board in accordance with the provisions of article
one, chapter ten of this code;

(40) To establish and maintain a public health unit in
accordance with the provisions of section two, article two,
chapter sixteen of this code, which unit shall exercise its powers
and perform its duties subject to the supervision and control of
the West Virginia board of health and state department of
health;

(41) To establish, construct, acquire, maintain and operate
hospitals, sanitariums and dispensaries;

(42) To acquire, by purchase, condemnation or otherwise,
land within or near the corporate limits of the municipality for
providing and maintaining proper places for the burial of the
dead and to maintain and operate the same and regulate
interments therein upon such terms and conditions as to price
and otherwise as may be determined by the governing body,
and, in order to carry into effect such authority the governing
body may acquire any cemetery or cemeteries already estab-

lished;

(43) To exercise general police jurisdiction over any
territory without the corporate limits owned by the municipality
or over which it has a right-of-way;

(44) To protect and promote the public morals, safety,
health, welfare and good order;

(45) To adopt rules for the transaction of business and the
government and regulation of its governing body;

(46) Except as otherwise provided, to require and take such
bonds from such officers, when deemed necessary, payable to
the municipality, in its corporate name, with such sureties and
in such penalty as the governing body may see fit, conditioned
upon the faithful discharge of their duties;

(47) To require and take from such employees and contrac-
tors such bonds in such penalty, with such sureties and with
such conditions, as the governing body may see fit;

(48) To investigate and inquire into all matters of concern
to the municipality or its inhabitants;

(49) To establish, construct, require, maintain and operate
such instrumentalities, other than free public schools, for the
instruction, enlightenment, improvement, entertainment,
recreation and welfare of the municipality’s inhabitants as the

governing body may deem necessary or appropriate for the

public interest;

(50) To create, maintain and operate a system for the
enumeration, identification and registration, or either, of the
inhabitants of the municipality and visitors thereto, or such
classes thereof as may be deemed advisable;

(51) To appropriate and expend not exceeding twenty-five
cents per capita per annum for advertising the municipality and
the entertainment of visitors;

(52) To conduct programs to improve community relations
and public relations generally and to expend municipal revenue
for such purposes;

(53) To reimburse applicants for employment by the
municipality for travel and other reasonable and necessary
expenses actually incurred by such applicants in traveling to
and from such municipality to be interviewed;

(54) To provide revenue for the municipality and appropri-
ate the same to its expenses;

(55) To create and maintain an employee benefits fund,
which shall not exceed one tenth of one percent of the annual
payroll budget for general employee benefits and which shall be
set up for the purpose of stimulating and encouraging employ-
ees to develop and implement cost-saving ideas and programs,
and to expend moneys from such fund for such purposes;

(56) To enter into reciprocal agreements with governmen-
tal subdivisions or agencies of any state sharing a common border
for the protection of people and property from fire and for
emergency medical services and for the reciprocal use of
equipment and personnel for such purposes; and

(57) To provide penalties for the offenses and violations of
law mentioned in this section, subject to the provisions of
section one, article eleven of this chapter, and such penalties
shall not exceed any penalties provided in this chapter and
chapter sixty-one of this code for like offenses and violations.
AN ACT to amend and reenact section twenty-two, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal authority to compel sewer connections outside corporate limits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

PART XII. CONNECTION TO SEWERS; BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

§8-18-22. Connection to sewers; board of health; penalty.

1 The owner or owners of any lot or parcel of land abutting on any street, alley, public way or easement on which a municipal sewer is now located or may hereafter be constructed and laid (whether constructed and laid under the provisions of this article or any other provisions of law) upon which lot or parcel of land any business or residence building is now located or may hereafter be erected, not connected with a public sewer, may be required and compelled by the municipality or by the board of health to connect any such building with such sewer.

Notice so to connect shall be given by the municipality or by the board of health to the owner and to the lessee or occupant
of such building. Each day's failure to comply with such notice
and connect with such sewer by such owner or owners, after
thirty days from the receipt of such notice, shall be a misde-
meanor and a separate and new offense under this section, and
each such offense shall be punishable by a fine of not less than
five nor more than twenty-five dollars. Jurisdiction to hear, try,
determine and sentence for any violation of this section is
hereby vested in the police or municipal court thereof when the
lot or parcel of land is within the municipality, or, where no
court or municipal court exists, in the mayor thereof:
Provided, That if said lot or parcel is located outside of the
municipality, then jurisdiction shall be vested in the circuit
court of the county wherein the lot or parcel is situated.

CHAPTER 203

(S. B. 188 — By Senators Helmick, Plymale, Kessler, Ross, Bowman,
Chafin, Fanning, Sharpe, Unger and Minear)

[Passed February 25, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-five,
chapter eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the inclusion of
members of the banking industry as regional council members;
and providing for conflicts of interest.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. INTERGOVERNMENTAL RELATIONS — REGIONAL
PLANNING AND DEVELOPMENT.

§8-25-6. Membership, organization, etc., of regional council;
executive committee; officers and personnel.
(a) All municipalities and all counties within the region shall be represented on the regional council. The county representative shall be the president of the county commission or a member of the county commission designated by him or her. The municipal representative shall be the mayor or a member of the governing body designated by him or her. The number of members of the regional council by virtue of this subsection shall comprise not less than fifty-one percent of the total number of members.

(b) Regional council members serving by virtue of subsection (a) of this section shall select additional members to serve on the council to represent principal community or regional interests, including, but not limited to, commerce, banking, industry, labor, agriculture, education, health and any such interests as may be required by federal law or regulations. The selection of such members shall also provide for reasonable representation of geographic, economic and ethnic groups without exclusion of significant minority groups. Subsequent changes in the designation of representatives shall be determined by the regional council. The number of members serving by virtue of this subsection shall not exceed forty-nine percent of the total number of members.

(c) Each regional council shall select from its membership a chairman, who shall preside at each council meeting, and an executive committee which shall be comprised of one representative from each county commission and one representative from the largest municipality within each county in the region and such other members as the aforesaid representatives may select, but such other members so selected shall not constitute more than forty-nine percent of the total membership of the executive committee. The executive committee shall perform such administrative duties as are prescribed by the regional council in its bylaws and shall exercise the review function provided for in section nine of this article. Each regional council may further provide for such other officers as it shall deem necessary and may establish other committees which may include citizens who are not regional council members.
(d) Each regional council shall establish personnel rules and shall appoint a director who shall be qualified by reason of training and experience. The director shall be empowered to appoint and remove other employees in accordance with the regional council’s personnel rules. He or she may, with the approval of the executive committee, enter into agreements with governmental agencies within the region for the use of personnel, equipment and facilities.

(e) Whenever a person associated with a public utility or bank has a conflict of interest between the council and that public utility or bank, or any other member of the council has a direct pecuniary interest in a question before the council, then he or she must recuse himself or herself from any vote, discussion or other activity associated with the council or its members that creates the conflict of interest.

CHAPTER 204

(Com. Sub. for S. B. 356 — By Senator Dittmar)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of natural resources; organizations and administration; legislative findings; empowering the director to authorize the construction and acquisition of buildings in certain circumstances; and requiring that new structures have sloped roofs.

Be it enacted by the Legislature of West Virginia:

That section twenty, article one, 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 1. ORGANIZATION AND ADMINISTRATION.

§20-1-20. Limitations on acquisition of land for state recreational facilities; limitations on construction of state recreational facilities; legislative findings and purpose; exceptions to limitations.

(a) The Legislature finds that the acquisition of land to construct new or to expand existing state recreational facilities is becoming more costly. Also, the Legislature finds that the construction of new or the expansion of existing state recreational facilities is becoming more costly. After such facilities are constructed, they must be maintained indefinitely and, in many instances, personnel must be employed to operate the facilities. This necessitates and places a continuing burden on state revenues. Furthermore, these costs are also increasing continually. The Legislature hereby declares that there is an ultimate limit to how many recreational facilities this state, with its size, population and financial resources can or should support. Further, the Legislature hereby declares that it must establish, provide for, and maintain, limits on state recreational facilities. The Legislature hereby declares that the purpose of this section is to establish, provide for and maintain limits on state recreational facilities.

After the first day of July, one thousand nine hundred seventy-seven, neither the director, nor any other officer, or employee, or agent of the division of natural resources may, without the express authorization of the Legislature:

(1) Acquire, or authorize the acquisition of, land for any new state park, forest, public fishing and hunting area, or other recreational facility; or

(2) Construct, or authorize the construction of, any new facility or building in any state park, forest, public hunting and fishing area, or other recreational facility.

 Nothing in this section shall prohibit the director from expending any appropriations made at any time which are designated to complete land acquisitions for state parks, forests, public hunting and fishing areas, or other recreational areas, which are in existence on the first day of July, one thousand
of July, one thousand nine hundred seventy-seven.

(b) The Legislature further finds that certain acquisitions and constructions, either due to the relatively minimal size of the project, due to the need for a timely decision to assure receipt to the state of the benefits of gratuitous transfers from public and non-public entities supportive of recreational facilities in the control of the division, or due to the existence of the high opportunity costs inherent in certain policy decisions, must necessarily be handled in a timely manner. Many of such acquisitions or constructions actually serve to lessen the total cost to the state for the maintenance and management of existing recreational facilities. The Legislature, therefore, hereby declares that the concepts of reasonableness and materiality require the following exceptions to the general requirement contained in subsection (a) of this section for legislative approval of acquisitions and constructions:

(1) The director may authorize the construction of any new facility or building which is constructed with donated funds or materials and labor in an existing state park, state forest, wildlife management area, or other recreational facility; and

(2) The director may construct or authorize the construction of any new facility or building when the total cost of materials does not exceed twenty-five thousand dollars by regular full-time employees of the division.

In any construction permitted by this subsection, the director must require that the new building, which includes a roof, designed, constructed and maintained with public funds of the state, a county or a municipality shall have a roof of sufficient slope so that water will not accumulate into a pool on any area of the roof, in accordance with the current state building code as it relates to roofs and roof structures.
CHAPTER 205

(S. B. 525 — By Senators Dittmar, Schoonover, Helmick, Anderson, Love, Ross, Ball, Hunter and Sharpe)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making it illegal to sell the organs and feet of a legally killed bear.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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.

§20-2-11. Sale of wildlife; transportation of same.

1 No person, except those legally licensed to operate private
2 game preserves for the purpose of propagating game for
3 commercial purposes and those legally licensed to propagate or
4 sell fish, amphibians and other forms of aquatic life, shall
5 purchase or offer to purchase, sell or offer to sell, expose for
6 sale, or have in his or her possession for the purpose of sale any
7 wildlife, or part thereof, which has been designated as game
8 animals, fur-bearing animals, game birds, game fish or amphib-
9 ians, or any of the song or insectivorous birds of the state, or
10 any other species of wildlife which the director may designate:
11 Provided, That pelts of game or fur-bearing animals taken
12 during the legal season may be sold and live red and gray foxes
13 and raccoon taken by legal methods during legal and estab-
14 lished trapping seasons may be sold within the state: Provided,
15 however, That hide, head, antlers and feet of a legally killed
16 deer and the hide, head and skull of a legally killed black bear
17 may be sold.
No person, including a common carrier, shall transport, carry or convey, or receive for such purposes any wildlife, the sale of which is prohibited, if such person knows or has reason to believe that such wildlife has been or is to be sold in violation of this section.

The selling or exposing for sale, having in possession for sale, transporting or carrying in violation of this section shall each constitute a separate misdemeanor offense. Notwithstanding the provisions of this or any other section of this chapter, any game birds or game bird meats sold by licensed retailers may be served at any hotel, restaurant or other licensed eating place in this state.

The director shall have authority to promulgate rules in accordance with chapter twenty-nine-a of this code, dealing with the sale of wildlife and the skins thereof.

CHAPTER 206

(S. B. 79 — By Senator Dittmar)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to issuance of hunting, trapping and fishing licenses; providing that certain hunting, trapping and fishing licenses may be purchased and issued electronically; director of natural resources may prescribe fee for electronic purchase and issuance; removal of one thousand dollar bonding requirement for agents issuing licenses; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That section thirty-three, 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.
§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.

(a) The director may appoint, in addition to the clerk of the county commission, agents to issue licenses under the provisions of this article to serve the convenience of the public. Each person appointed shall, before issuing any license, file with the director a bond payable to the state of West Virginia, in the amount to be fixed by the director, conditioned upon the faithful performance of his or her obligation to issue licenses only in conformity with the provisions of this article and to account for all license fees received by him or her. The form of the bond shall be prescribed by the attorney general. No person, other than those designated as issuing agents by the director, shall sell licenses or buy the licenses for the purposes of resale.

(b) Except when a license is purchased from a state official, every person making application for a license shall pay, in addition to the license fee prescribed for it in this article, an additional fee of seventy-five cents to any county official issuing the license and all fees collected by county officials shall be paid by them into the general fund of the county treasury or, in the case of an agent issuing the license, an additional fee of one dollar as compensation: Provided, That only one fee of seventy-five cents or one dollar shall be collected by county officials or authorized agents, respectively, for issuing two or more licenses at the same time for use by the same person or for issuing combination resident statewide hunting, trapping and fishing licenses: Provided, however, That licenses may be issued electronically in a manner prescribed by the director, and persons purchasing electronically issued licenses may be assessed, in addition to the license fee prescribed in this article, an electronic issuance fee to be prescribed by the director.

(c) In lieu of the license issuance fee prescribed in subsection (b) of this section, the director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, governing the application for and issuance of licenses by telephone and other electronic methods.
AN ACT to amend and reenact section seven, article two-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the director to issue lifetime hunting, fishing and trapping licenses; providing that full-time nonresident students are ineligible for licenses; requiring director to promulgate legislative rules setting the fees; and authorizing the director to promulgate emergency rules.

Be it enacted by the Legislature of West Virginia:

That section seven, article two-b, 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 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

(a) Pursuant to section three of this article, the director may issue the following lifetime hunting, fishing and trapping licenses and for the lifetime of the licensee, the lifetime licenses serve in lieu of the equivalent annual license: Lifetime resident statewide hunting and trapping license; lifetime resident combination statewide hunting, fishing and trapping license; lifetime statewide fishing license; and lifetime resident trout fishing license: Provided, That a full-time nonresident student who attends an in-state college or university is not eligible to purchase any of these lifetime licenses.

(b) The director shall propose a legislative rule for promulgation in accordance with article three, chapter twenty-nine-a of this code, setting the fees for the lifetime licenses. The rule shall provide that the fee for any resident who has not reached
his or her second birthday shall be one half of the adult fee set under the rule: Provided, That the rule first proposed for promulgation under this section may be promulgated as an emergency rule under the provisions of section fifteen, article three, chapter twenty-nine of this code.

CHAPTER 208

(H. B. 2005 — By Delegates Amores, Mahan, Linch, Faircloth and Trump)

[Passed March 21, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six and seven, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto five new sections, designated sections eight, nine, ten, eleven and twelve; to amend and reenact section two, article five-g, chapter sixteen of said code; and to further amend said article by adding thereto five new sections, designated sections three, four, five, six and seven, all relating generally to open governmental and nonprofit hospital meetings; declaring legislative policy; providing definitions; providing that proceedings be open; requiring public notice of meetings; providing for exceptions; establishing requirements for minutes and providing for exceptions; providing for enforcement by injunction; providing that actions taken in violation of this article are voidable; providing for voidability of bond issues; establishing criminal penalties; providing for payment of attorney fees and expenses; prohibiting action by reference, secret or written ballot; providing for broadcasting or recording of meetings; creating an open governmental meetings committee within the West Virginia ethics commission; providing for advisory opinions; establishing for immunity; establishing duty of attorney general, secretary of state, clerks of county commissions, city clerks and recorders to provide information; providing definitions for open hospital proceedings; requiring proceedings to be open; requiring public
notice of meetings; providing exceptions; establishing require-
ments for minutes; providing for enforcement by injunctions;
providing that actions in violation are voidable; providing for
violations; and penalties.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six and seven, article
nine-a, chapter six 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 five new sections,
designated sections eight, nine, ten, eleven and twelve; that section
two, article five-g, chapter sixteen of said code be amended and
reenacted; and that said article be further amended by adding thereto
five new sections, designated sections three, four, five, six and seven,
all to read as follows:

Chapter

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.
§6-9A-1. Declaration of legislative policy.
§6-9A-3. Proceedings to be open; public notice of meetings.
§6-9A-4. Exceptions.
§6-9A-6. Enforcement by injunctions; actions in violation of article voidable;
voidability of bond issues.
§6-9A-7. Violation of article; criminal penalties; attorney fees and expenses in civil
actions.
§6-9A-10. Open governmental meetings committee.
§6-9A-11. Request for advisory opinion; maintaining confidentiality.
§6-9A-12. Duty of attorney general, secretary of state, clerks of the county commis-
sions and city clerks or recorders.

§6-9A-1. Declaration of legislative policy.

The Legislature hereby finds and declares that public
agencies in this state exist for the singular purpose of represent-
ing citizens of this state in governmental affairs, and it is, therefore, in the best interests of the people of this state for the proceedings of public agencies be conducted openly, with only a few clearly defined exceptions. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

Open government allows the public to educate itself about government decision making through individuals' attendance and participation at government functions, distribution of government information by the press or interested citizens, and public debate on issues deliberated within the government.

Public access to information promotes attendance at meetings, improves planning of meetings, and encourages more thorough preparation and complete discussion of issues by participating officials. The government also benefits from openness because better preparation and public input allow government agencies to gauge public preferences accurately and thereby tailor their actions and policies more closely to public needs. Public confidence and understanding ease potential resistance to government programs.

Accordingly, the benefits of openness inure to both the public affected by governmental decision making and the decisionmakers themselves. The Legislature finds, however, that openness, public access to information and a desire to improve the operation of government do not require nor permit every meeting to be a public meeting. The Legislature finds that it would be unrealistic, if not impossible, to carry on the business of government should every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting. It is the intent of the Legislature to balance these interests in order
to allow government to function and the public to participate in
a meaningful manner in public agency decisionmaking.


As used in this article:

(1) "Decision" means any determination, action, vote or
final disposition of a motion, proposal, resolution, order,
ordinance or measure on which a vote of the governing body is
required at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a
meeting of a governing body which is closed to the public.

(3) "Governing body" means the members of any public
agency having the authority to make decisions for or recom-
mandations to a public agency on policy or administration, the
membership of a governing body consists of two or more
members; for the purposes of this article, a governing body of
the Legislature is any standing, select or special committee,
except the commission on special investigations, as determined
by the rules of the respective houses of the Legislature.

(4) "Meeting" means the convening of a governing body of
a public agency for which a quorum is required in order to
make a decision or to deliberate toward a decision on any
matter which results in an official action. Meetings may be held
by telephone conference or other electronic means. The term
meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory
decision in any quasi-judicial, administrative or court of claims
proceeding;

(B) Any on-site inspection of any project or program;

(C) Any political party caucus;

(D) General discussions among members of a governing
body on issues of interest to the public when held in a planned
or unplanned social, educational, training, informal, ceremonial
or similar setting, without intent to conduct public business
even if a quorum is present and public business is discussed but
there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

(5) "Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.

(6) "Public agency" means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power. The term "public agency" does not include courts created by article eight of the West Virginia constitution or the system of family law masters created by article four, chapter forty-eight-a of this code.

(7) "Quorum" means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio.

§6-9A-3. Proceedings to be open; public notice of meetings.

Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public. Any governing body may make and enforce reasonable rules for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend. This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: Provided, That persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.
Each governing body shall promulgate rules by which the
date, time, place and agenda of all regularly scheduled meetings
and the date, time, place and purpose of all special meetings are
made available, in advance, to the public and news media,
except in the event of an emergency requiring immediate
official action.

Each governing body of the executive branch of the state
shall file a notice of any meeting with the secretary of state for
publication in the state register. Each notice shall state the date,
time, place and purpose of the meeting. Each notice shall be
filed in a manner to allow each notice to appear in the state
register at least five days prior to the date of the meeting.

In the event of an emergency requiring immediate official
action, any governing body of the executive branch of the state
may file an emergency meeting notice at any time prior to the
meeting. The emergency meeting notice shall state the date,
time, place and purpose of the meeting and the facts and
circumstances of the emergency.

Upon petition by any adversely affected party any court of
competent jurisdiction may invalidate any action taken at any
meeting for which notice did not comply with the requirements
of this section.

§6-9A-4. Exceptions.

(a) The governing body of a public agency may hold an
executive session during a regular, special or emergency
meeting, in accordance with the provisions of this section.
During the open portion of the meeting, prior to convening an
executive session, the presiding officer of the governing body
shall identify the authorization under this section for holding
the executive session and present it to the governing body and
to the general public, but no decision may be made in the
executive session.

(b) An executive session may be held only upon a majority
affirmative vote of the members present of the governing body
of a public agency. A public agency may hold an executive
session and exclude the public only when a closed session is
required for any of the following actions:

(1) To consider acts of war, threatened attack from a foreign power, civil insurrection or riot;

(2) To consider:

(A) Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting; or

(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a public officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by a public agency having authority for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of an individual shall be taken in an open meeting;

(3) To decide upon disciplining, suspension or expulsion of any student in any public school or public college or university, unless the student requests an open meeting;

(4) To issue, effect, deny, suspend or revoke a license, certificate or registration under the laws of this state or any political subdivision, unless the person seeking the license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting;

(5) To consider the physical or mental health of any person, unless the person requests an open meeting;

(6) To discuss any material the disclosure of which would constitute an unwarranted invasion of an individual’s privacy such as any records, data, reports, recommendations or other personal material of any educational, training, social service, rehabilitation, welfare, housing, relocation, insurance and
similar program or institution operated by a public agency pertaining to any specific individual admitted to or served by the institution or program, the individual’s personal and family circumstances;

(7) To plan or consider an official investigation or matter relating to crime prevention or law enforcement;

(8) To develop security personnel or devices;

(9) To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the state or any political subdivision: Provided, That information relied on during the course of deliberations on matters involving commercial competition are exempt from disclosure under the open meetings requirements of this article only until the commercial competition has been finalized and completed: Provided, however, That information not subject to release pursuant to the West Virginia freedom of information act does not become subject to disclosure as a result of executive session;

(10) To avoid the premature disclosure of an honorary degree, scholarship, prize or similar award;

(11) Nothing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant. If the public agency has approved or considered a settlement in closed session, and the terms of the settlement allow disclosure, the terms of that settlement shall be reported by the public agency and entered into its minutes within a reasonable time after the settlement is concluded;

(12) To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of the freedom of information act as set forth in article one, chapter twenty-nine-b of this code.

Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

1. The date, time and place of the meeting;
2. The name of each member of the governing body present and absent;
3. All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
4. The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.

The circuit court in the county where the public agency regularly meets has jurisdiction to enforce this article upon civil action commenced by any citizen of this state within one hundred twenty days after the action complained of was taken or the decision complained of was made. Where the action seeks injunctive relief, no bond may be required unless the petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

The court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation of this article. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article: Provided, That no bond issue that has been passed or approved by any governing body in this state may be annulled under this
section if notice of the meeting at which the bond issue was
finally considered was given at least ten days prior to the
meeting by a Class I legal advertisement published in acord-
ance with the provisions of article three, chapter fifty-nine of
this code in a qualified newspaper having a general circulation
in the geographic area represented by that governing body.

In addition to or in conjunction with any other acts or
omissions which may be determined to be in violation of this
act, it is a violation of this act for a governing body to hold a
private meeting with the intention of transacting public busi-
ness, thwarting public scrutiny and making decisions that
eventually become official action.

Any order which compels compliance or enjoins noncom-
pliance with the provisions of this article, or which annuls a
decision made in violation of this article shall include findings
of fact and conclusions of law and shall be recorded in the
minutes of the governing body.

§6-9A-7. Violation of article; criminal penalties; attorney fees and
expenses in civil actions.

(a) Any person who is a member of a public or governmen-
tal body required to conduct open meetings in compliance with
the provisions of this article and who willfully and knowingly
violates the provisions of this article is guilty of a misdemeanor
and, upon conviction thereof, shall be fined not more than five
hundred dollars: Provided, That a person who is convicted of a
second or subsequent offense under this subsection is guilty of
a misdemeanor and, upon conviction thereof, shall be fined not
less than one hundred dollars nor more than one thousand
dollars.

(b) A public agency whose governing body is adjudged in
a civil action to have conducted a meeting in violation of the
provisions of this article may be liable to a prevailing party for
fees and other expenses incurred by that party in connection
with litigating the issue of whether the governing body acted in
violation of this article, unless the court finds that the position
of the public agency was substantially justified or that special
circumstances make an award of fees and other expenses unjust.

(c) Where the court, upon denying the relief sought by the complaining person in the action, finds that the action was frivolous or commenced with the primary intent of harassing the governing body or any member thereof or, in the absence of good faith, of delaying any meetings or decisions of the governing body, the court may require the complaining person to pay the governing body’s necessary attorney fees and expenses.


(a) Except as otherwise expressly provided by law, the members of a public agency may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designation or other secret device or method, which may render it difficult for persons attending a meeting of the public agency to understand what is being deliberated, voted or acted upon. However, this subsection does not prohibit a public agency from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are available for public inspection at the meeting.

(b) A public agency may not vote by secret or written ballot.


(a) Except as otherwise provided in this section, any radio or television station is entitled to broadcast all or any part of a meeting required to be open.

(b) A public agency may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The public agency shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue interference: Provided, That if the
public agency, in good faith, determines that the size of the meeting room is such that all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public agency, acting in good faith and consistent with the purposes of this article, may require the pooling of the equipment and the personnel operating it.

§6-9A-10. Open governmental meetings committee.

The West Virginia ethics commission, pursuant to subsection (j), section one, article two, chapter six-b of this code, shall appoint from the membership of the commission a subcommittee of three persons designated as the West Virginia ethics commission committee on open governmental meetings. The chairman shall designate one of the persons to chair the committee. In addition to the three members of the committee, two additional members of the commission shall be designated to serve as alternate members of the committee.

The chairman of the committee or the executive director shall call meetings of the committee to act on requests for advisory opinions interpreting the West Virginia open governmental meetings act. Advisory opinions shall be issued in a timely manner, not to exceed thirty days.

§6-9A-11. Request for advisory opinion; maintaining confidentiality.

(a) Any governing body or member thereof subject to the provisions of this article may seek advice and information from the executive director of the West Virginia ethics commission or request in writing an advisory opinion from the West Virginia ethics commission committee on open governmental meetings as to whether an action or proposed action violates the provisions of this article. The executive director may render oral advice and information upon request. The committee shall respond in writing and in an expeditious manner to a request for
an advisory opinion. The opinion shall be binding on the parties requesting the opinion.

(b) Any governing body or member thereof that seeks an advisory opinion and acts in good faith reliance on the opinion has an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion unless the committee was willfully and intentionally misinformed as to the facts by the body or its representative.

(c) The committee and commission may take appropriate action to protect from disclosure information which is properly shielded by an exception provided for in section four of this article.

§6-9A-12. Duty of attorney general, secretary of state, clerks of the county commissions and city clerks or recorders.

It is the duty of the attorney general to compile the statutory and case law pertaining to this article and to prepare appropriate summaries and interpretations for the purpose of informing all public officials subject to this article of the requirements of this article. It is the duty of the secretary of state, the clerks of the county commissions, joint clerks of the county commissions and circuit courts, if any, and the city clerks or recorders of the municipalities of the state to provide a copy of the material compiled by the attorney general to all elected public officials within their respective jurisdictions. The clerks or recorders will make the material available to appointed public officials. Likewise, it is their respective duties to provide a copy or summary to any newly appointed or elected person within thirty days of the elected or appointed official taking the oath of office or an appointed person's start of term.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5G. OPEN HOSPITAL PROCEEDINGS.

§16-5G-3. Proceedings to be open; public notice of meetings.
§16-5G-4. Exceptions.
§16-5G-5. Minutes.
§16-5G-6. Enforcement by injunctions; actions in violation of article voidable.

§16-5G-7. Violation of article; penalties.


As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order or measure on which a vote of the governing body is required at any meeting at which a quorum is present;

(2) "Executive session" means any meeting or part of a meeting of a governing body of a hospital that is closed to the public;

(3) "Governing body" means the board of directors or other group of persons having the authority to make decisions for or recommendations on policy or administration to a hospital owned or operated by a nonprofit corporation, nonprofit association or local governmental unit, the membership of which governing body consists of two or more members;

(4) "Hospital" means any hospital owned or operated by a nonprofit corporation, nonprofit association or local governmental unit;

(5) "Meeting" means the convening of a governing body of a hospital for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter: Provided, That a medical staff conference is not a meeting; and

(6) "Quorum" means, unless otherwise defined by applicable law, a simple majority of the constituent membership of a governing body.

§16-5G-3. Proceedings to be open; public notice of meetings.

Except as expressly and specifically otherwise provided by law, and except as provided in section four of this article, all meetings of a governing body of a hospital shall be open to the public. Any governing body may make and enforce reasonable rules and regulations for attendance and presentation at any meeting where there is not room enough for all members of the
public who wish to attend. This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: Provided, That persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.

Each governing body shall promulgate rules by which the date, time and place of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action.

Each governing body shall file a notice of any meeting by causing a notice of the meeting to be printed in a local newspaper: Provided, That the governing body may otherwise provide by rule or regulation an alternative procedure that will reasonably provide the public with notice. Each notice shall state the date, time, place and purpose of the meeting.

In the event of an emergency requiring immediate official action, any governing body may provide an emergency meeting notice at any time prior to the meeting. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

Upon petition by any adversely affected party, any court of competent jurisdiction may invalidate any action taken at any meeting for which notice did not comply with the requirements of this section.

§16-5G-4. Exceptions.

(a) This article does not prevent the governing body of a hospital from holding an executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under this article for the holding of such executive session and has presented it to the governing body and to the general public, but no official action shall be made in such executive session.
An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a hospital as defined in this article for the following:

1. The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against an officer or employee, unless the officer or employee requests an open meeting;

2. The disciplining, suspension or expulsion of any student or trainee enrolled in a program conducted by the hospital, unless the student or trainee requests an open meeting;

3. Investigations and proceeding involving the issuance, denial, suspension or revocation of the authority or privilege of a medical practitioner to use the hospital and to engage in particular kinds of practice or to perform particular kinds of operations, unless the person seeking the authority or privilege or whose authority or privilege was denied, suspended or revoked requests an open meeting;

4. Matters concerning the failure or refusal of a medical practitioner to comply with reasonable regulations of a hospital with respect to the conditions under which operations are performed and other medical services are delivered;

5. To consider the work product of the hospital’s attorney or the hospital administration;

6. The physical or mental health of any person, unless the person requests an open meeting;

7. Matters which, if discussed in public, would be likely to affect adversely the reputation of any person;

8. Any official investigation or matters relating to crime prevention or law enforcement;

9. The development of security personnel or devices; or

10. Matters involving or affecting the purchase, sale or lease of property, advance construction planning, the invest-
42. ment of public funds or other matters involving competition
43. which, if made public, might adversely affect the financial or
44. other interest of the state or any political subdivision or the
45. hospital.

§16-5G-5. Minutes.
1. Each governing body shall provide for the preparation of
2. written minutes of all of its meetings. Subject to the exceptions
3. set forth in section four of this article, minutes of all meetings
4. except minutes of executive sessions, if any are taken, shall be
5. available to the public within a reasonable time after the
6. meeting and shall include, at least, the following information:

   (1) The date, time and place of the meeting;
   (2) The name of each member of the governing body
      present and absent;
   (3) All motions, proposals, resolutions, orders, ordinances
      and measures proposed, the name of the person proposing the
      same and their disposition; and
   (4) The results of all votes and, upon the request of a
      member, pursuant to the rules, policies or procedures of the
      governing board for recording roll call votes, the vote of each
      member, by name.

§16-5G-6. Enforcement by injunctions; actions in violation of
article voidable.

1. The circuit court in the county where a hospital is located
2. has jurisdiction to enforce this article upon civil action com-
3. menced by any citizen of this state within one hundred twenty
4. days after the action complained of was taken or the decision
5. complained of was made. Where the action seeks injunctive
6. relief, no bond may be required unless the petition appears to be
7. without merit or made with the sole intent of harassing or
8. delaying or avoiding return by the governing body.

9. The court is empowered to compel compliance or enjoin
10. noncompliance with the provisions of this article and to annul
11. a decision made in violation of this article. An injunction may
also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article.

Any order which compels compliance or enjoins noncompliance with the provisions of this article, or which annuls a decision made in violation of this article shall include findings of fact and conclusions of law and shall be recorded in the minutes of the governing body.

Upon entry of an order, the court may, where the court finds that the governing body intentionally violated the provisions of this article, order the governing body to pay the complaining person's necessary attorney fees and expenses. Where the court, upon denying the relief sought by the complaining person in the action, finds that the action was frivolous or commenced with the primary intent of harassing the governing body or any member thereof or, in the absence of good faith, of delaying any meetings or decisions of the governing body, the court may require the complaining person to pay the governing body's necessary attorney fees and expenses.

Any person who intentionally violates the provisions of this article is liable in an action for compensatory and punitive damages not to exceed a total of five hundred dollars.

§16-5G-7. Violation of article; penalties.

(a) In addition to or in conjunction with any other acts or omissions which may be determined to violate this act, it is a violation of this act for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

(b) Any person who is a member of a governing body of a hospital required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in jail not more than ten days, or both fined and confined.
AN ACT to amend article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to requiring the auditor to provide orientation sessions; requiring attendance of certain members of newly created state boards or commissions; reimbursement of expenses; reports by auditor; and authorizing charging of registration fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-2a. Required orientation session.

(a) After the first day of April and not later than the thirty-first day of July of each year, the auditor shall provide at least one orientation session on relevant state law and rules governing state boards and commissions. All state agencies shall cooperate with and assist in providing the orientation session if the auditor requests.

(b) After the effective date of this section, all chairs or chief financial officers of state boards and commissions newly created by the Legislature shall attend an orientation session designed to inform the state boards and commissions of the duties and requirements imposed on state boards and commissions by state law and rules. The chair or chief financial officer of the newly created board or commission shall attend an
orientation session at the earliest possible date following the creation of the board or commission.

(c) Topics for the orientation session may include, but are not limited to: The official conduct of members, state budgeting and financial procedures, purchasing requirements, open meetings requirements, ethics, rule-making procedures, records management, annual reports and any other topics the auditor determines to be essential in the fulfillment of the duties of the members of state boards and commissions.

(d) The orientation session shall be open to any member of new or existing boards and commissions and each board or commission may approve expense reimbursement for the attendance of one or more of its members. The chair or chief financial officer of each existing board or commission shall attend an orientation session within two years following the effective date of this section.

(e) No later than the tenth day of August of each year, the auditor shall provide to the chairs of the joint standing committee on government operations a list of the names of board or commission members attending, together with the names of the boards and commissions represented, the orientation session or sessions offered by the auditor since the previous April first.

(f) The auditor may charge a registration fee for the orientation session to cover the cost of providing the orientation session. The fee may be paid from funds available to a board or commission.

(g) Notwithstanding the member's normal rate of compensation for serving on a board, a member attending the orientation session may be reimbursed for necessary and actual expenses, as long as the member attends the complete orientation session.

(h) Ex officio members who are elected or appointed state officers or employees, and members of boards or commissions that have purely advisory functions with respect to a department or agency of the state, are exempt from the requirements of this section.
AN ACT to amend and reenact sections two, ten, thirteen, fourteen and fifteen, article three, chapter thirty 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 eighteen, all relating to the West Virginia medical practice act; expanding the purposes of the article creating the board of medicine; authorizing the board to enter into reciprocity agreements with other jurisdictions; providing an exemption for eligible graduates of certain foreign medical schools from meeting additional requirements for licensure; defining the term "telemedicine"; requiring licensure for persons engaged in the practice of telemedicine, and providing exceptions; expanding the basis for board investigations; eliminating certain mandatory reporting; providing additional due process protections for physicians subject to disciplinary proceedings; stating the evidentiary standard for board action; permitting assessment of cost against complainant in certain cases; providing for remand in cases of after-discovered evidence; mediation; authorizing the formation of medical corporations with licensed osteopathic physicians; and continuing the board pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

That sections two, ten, thirteen, fourteen and fifteen, article three, chapter thirty 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 eighteen, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.
§30-3-2. Purpose.
§30-3-10. Licenses to practice medicine and surgery or podiatry.
§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.
§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.
§30-3-15. Medical corporations; podiatry corporations; application for registration; fees; notice to secretary of state of issuance of certificate; action by secretary of state; rights and limitations generally; biennial registration; when practice to cease; admissibility and effect of certificate signed by secretary of board; criminal penalty; severability.
§30-3-18. Continuation of board.

§30-3-2. Purpose.

The purpose of this article is to provide for the licensure and professional discipline of physicians and podiatrists and for the certification and discipline of physician assistants and to provide a professional environment that encourages the delivery of quality medical services within this state.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

(a) The board shall issue a license to practice medicine and surgery or to practice podiatry to any individual who is qualified to do so in accordance with the provisions of this article.

(b) For an individual to be licensed to practice medicine and surgery in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of medicine and surgery;
(2) He or she must provide evidence of graduation and receipt of the degree of doctor of medicine or its equivalent from a school of medicine, which is approved by the liaison committee on medical education or by the board;

(3) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the accreditation council for graduate medical education; and

(4) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice medicine and surgery. The board shall before the date of examination determine what will constitute a passing score: Provided, That the board, or a majority of them, may accept in lieu of an examination of applicants, the certificate of the national board of medical examiners: Provided, however, That the board is authorized to enter into reciprocity agreements with medical licensing authorities in other states, the District of Columbia, Canada or the Commonwealth of Puerto Rico, and, for an applicant who: (i) Is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state or jurisdiction having reciprocity; (ii) has been engaged on a full-time professional basis in the practice of medicine within that state or jurisdiction for a period of at least five years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline by a medical licensing board in any jurisdiction, the board may permit licensure in this state by reciprocity. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of medicine and surgery, before being eligible for reexamination.

(c) In addition to the requirements of subsection (b) hereof, any individual who has received the degree of doctor of medicine or its equivalent from a school of medicine located
outside of the United States, the Commonwealth of Puerto Rico and Canada, to be licensed to practice medicine in this state, must also meet the following additional requirements and limitations:

(1) He or she must be able to demonstrate to the satisfaction of the board his or her ability to communicate in the English language;

(2) Before taking a licensure examination, he or she must have fulfilled the requirements of the educational commission for foreign medical graduates for certification, or he or she must provide evidence of receipt of a passing score on the examination of the educational commission for foreign medical graduates: Provided, That an applicant who: (i) Is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico; (ii) has been engaged on a full-time professional basis in the practice of medicine within the state or jurisdiction where the applicant is fully licensed for a period of at least five years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline by a medical licensing board in any jurisdiction, is not required to have a certificate from the educational commission for foreign medical graduates;

(3) He or she must submit evidence to the board of either: (i) Having successfully completed a minimum of two years of graduate clinical training in a program approved by the accreditation council for graduate medical education; or (ii) current certification by a member board of the American board of medical specialties.

(d) For an individual to be licensed to practice podiatry in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn
and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of podiatric medicine;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of podiatric medicine and its equivalent from a school of podiatric medicine which is approved by the council of podiatry education or by the board;

(3) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant’s fitness to practice podiatric medicine. The board shall before the date of examination determine what will constitute a passing score. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of podiatric medicine, before being eligible for reexamination; and

(4) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the council on podiatric medical education, or the colleges of podiatric medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the U. S. armed forces or three years private podiatric clinical experience in lieu of this requirement.

(e) All licenses to practice medicine and surgery granted prior to the first day of July, one thousand nine hundred ninety-one, and valid on that date, shall continue in full effect for the term and under the conditions provided by law at the time of the granting of the license: Provided, That the provisions of subsection (d) of this section shall not apply to any person legally entitled to practice chiropody or podiatry in this state prior to the eleventh day of June, one thousand nine hundred sixty-five: Provided, however, That all persons licensed to practice chiropody prior to the eleventh day of June, one thousand nine hundred sixty-five, shall be permitted to use
the term "chiropody-podiatry" and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.

(a) A person shall not engage in the practice of medicine and surgery or podiatry, hold himself or herself out as qualified to practice medicine and surgery or podiatry or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice medicine and surgery or podiatry in this state unless he or she is actually licensed under the provisions of this article. A person engaged in the practice of telemedicine is considered to be engaged in the practice of medicine within this state and is subject to the licensure requirements of this article. As used in this section, the "practice of telemedicine" means the use of electronic information and communication technologies to provide health care when distance separates participants and includes one or both of the following: (1) The diagnosis of a patient within this state by a physician located outside this state as a result of the transmission of individual patient data, specimens or other material by electronic or other means from within this state to the physician or his or her agent; or (2) the rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data, specimens or other material by electronic or other means from within this state to the physician or his or her agent. No person may practice as a physician's assistant, hold himself or herself out as qualified to practice as a physician's assistant, or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice as a physician's assistant in this state unless he or she is actually licensed under the provisions of this article. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the county jail not more than twelve months, or both fined and imprisoned.
(b) The provisions of this section do not apply to:

(1) Persons who are duly licensed health care providers under other pertinent provisions of this code and are acting within the scope of their license;

(2) Physicians or podiatrists licensed in other states or foreign countries who are acting in a consulting capacity with physicians or podiatrists duly licensed in this state, for a period of not more than three months: Provided, That this exemption is applicable on a one-time only basis;

(3) An individual physician or podiatrist, or physician or podiatrist, or physician or podiatrist groups, or physicians or podiatrists at a tertiary care or university hospital outside this state and engaged in the practice of telemedicine who consult or render second opinions concerning diagnosis or treatment of patients within this state: (i) In an emergency or without compensation or expectation of compensation; or (ii) on an irregular or infrequent basis which occurs less than once a month or less than twelve times in a calendar year;

(4) Persons holding licenses granted by another state or foreign country who are commissioned medical officers of, a member of or employed by the armed forces of the United States, the United States public health service, the veterans' administration of the United States, any federal institution or any other federal agency while engaged in the performance of their official duties;

(5) Any person providing first-aid care in emergency situations;

(6) The practice of the religious tenets of any recognized church in the administration of assistance to the sick or suffering by mental or spiritual means;

(7) Visiting medical faculty engaged in teaching or research duties at a medical school or institution recognized by the board and who are in this state for periods of not more than six months: Provided, That the individuals do not otherwise engage in the practice of medicine or podiatry outside of the auspices of their sponsoring institutions;
(8) Persons enrolled in a school of medicine approved by the liaison committee on medical education or by the board, or persons enrolled in a school of podiatric medicine approved by the council of podiatry education or by the board, or persons enrolled in an undergraduate or graduate physician assistant program approved by the committee on allied health education and accreditation or its successor on behalf of the American medical association or by the board, or persons engaged in graduate medical training in a program approved by the liaison committee on graduate medical education or the board, or engaged in graduate podiatric training in a program approved by the council on podiatric medical education or by the board, who are performing functions in the course of training including with respect to functions performed by medical residents or medical students under the supervision of a licensed physician, ordering and obtaining laboratory tests, medications and other patient orders by computer or other electronic means and no other provision of this code to the contrary may be construed to prohibit or limit medical residents' or medical students' use of computers or other electronic devices in this manner;

(9) The fitting, recommending or sale of corrective shoes, arch supports or similar mechanical appliances in commercial establishments; and

(10) The fitting or sale of a prosthetic or orthotic device not involving any surgical procedure, in accord with a prescription of a physician, osteopathic physician, or where chiropractors or podiatrists are authorized by law to prescribe such a prosthetic or orthotic device, in accord with a prescription of a chiropractor or podiatrist, by a practitioner or registered technician certified by the American board for certification of orthotics and prosthetics in either prosthetics or orthotics: Provided, That the sale of any prosthetic or orthotic device by a partnership, proprietorship or corporation which employs such a practitioner or registered technician who fitted the prosthetic or orthotic device shall not constitute the unauthorized practice of medicine: Provided, however, That the practitioner or registered technician may, without a prescription, make recommendation solely to a physician or osteopathic physician or to a chiroprac-
tor or podiatrist otherwise authorized by law to prescribe a
particular prosthetic or orthotic device, regarding any prosthetic
or orthotic device to be used for a patient upon a request for
such recommendation.

(c) This section shall not be construed as being in any way
a limitation upon the services of a physician’s assistant per-
formed in accordance with the provisions of this article.

(d) Persons covered under this article may be permitted to
utilize electronic signature or unique electronic identification to
effectively sign materials, transmitted by computer or other
electronic means, upon which signature is required for the
purpose of authorized medical practice. Such signatures are
deemed legal and valid for purposes related to the provision of
medical services. This subsection does not confer any new
practice privilege or right on any persons covered under this
article.

§30-3-14. Professional discipline of physicians and podiatrists;
reporting of information to board pertaining to
professional malpractice and professional incompe-
tence required; penalties; grounds for license denial
and discipline of physicians and podiatrists; investiga-
tions; physical and mental examinations; hearings;
sanctions; summary sanctions; reporting by the
board; reapplication; civil and criminal immunity;
voluntary limitation of license; probable cause
determinations.

(a) The board may independently initiate disciplinary
proceedings as well as initiate disciplinary proceedings based
on information received from medical peer review committees,
physicians, podiatrists, hospital administrators, professional
societies and others.

The board may initiate investigations as to professional
incompetence or other reasons for which a licensed physician
or podiatrist may be adjudged unqualified based upon criminal
convictions; complaints by citizens, pharmacists, physicians,
podiatrists, peer review committees, hospital administrators,
professional societies or others; or if there are five judgments or settlements within the most recent five-year period in excess of fifty thousand dollars each. The board may not consider any judgments or settlements as conclusive evidence of professional incompetence or conclusive lack of qualification to practice.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of the requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. In the event that copies are so provided, the subject physician or podiatrist is allowed fifteen days to comment on the requested information and such comments must be considered by the board.

After the completion of the hospital's formal disciplinary procedure and after any resulting legal action, the chief executive officer of the hospital shall report in writing to the board within sixty days the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported. Voluntary cessation of hospital privileges for reasons unrelated to professional competence or ethics need not be reported.

Any professional society in this state comprised primarily of physicians or podiatrists which takes formal disciplinary action against a member relating to professional ethics, profes-
48 professional incompetence, professional malpractice, moral turpitude
49 or drug or alcohol abuse, shall report in writing to the board
50 within sixty days of a final decision the name of the member,
51 together with all pertinent information relating to the action.
52
53 Every person, partnership, corporation, association, insurance
54 company, professional society or other organization
55 providing professional liability insurance to a physician or
56 podiatrist in this state shall submit to the board the following
57 information within thirty days from any judgment, or settlement
58 of a civil or medical malpractice action excepting product
59 liability actions: The date of any judgment or settlement;
60 whether any appeal has been taken on the judgment, and, if so,
61 by which party; the amount of any settlement or judgment
62 against the insured; and other information as the board may
63 require.

64 Within thirty days after a person known to be a physician
65 or podiatrist licensed or otherwise lawfully practicing medicine
66 and surgery or podiatry in this state or applying to be so
67 licensed is convicted of a felony under the laws of this state, or
68 of any crime under the laws of this state involving alcohol or
69 drugs in any way, including any controlled substance under
70 state or federal law, the clerk of the court of record in which the
71 conviction was entered shall forward to the board a certified
72 true and correct abstract of record of the convicting court. The
73 abstract shall include the name and address of the physician or
74 podiatrist or applicant, the nature of the offense committed and
75 the final judgment and sentence of the court.

76 Upon a determination of the board that there is probable
77 cause to believe that any person, partnership, corporation,
78 association, insurance company, professional society or other
79 organization has failed or refused to make a report required by
80 this subsection, the board shall provide written notice to the
81 alleged violator stating the nature of the alleged violation and
82 the time and place at which the alleged violator shall appear to
83 show good cause why a civil penalty should not be imposed.
84 The hearing shall be conducted in accordance with the provi-
85 sions of article five, chapter twenty-nine-a of this code. After
reviewing the record of the hearing, if the board determines that
a violation of this subsection has occurred, the board shall
assess a civil penalty of not less than one thousand dollars nor
more than ten thousand dollars against the violator. Anyone so
assessed shall be notified of the assessment in writing and the
notice shall specify the reasons for the assessment. If the
violator fails to pay the amount of the assessment to the board
within thirty days, the attorney general may institute a civil
action in the circuit court of Kanawha County to recover the
amount of the assessment. In any such civil action, the court’s
review of the board’s action shall be conducted in accordance
with the provisions of section four, article five, chapter twenty-
ine-a of this code. Notwithstanding any other provision of this
article to the contrary, when there are conflicting views by
recognized experts as to whether any alleged conduct breaches
an applicable standard of care, the evidence must be clear and
convincing before the board may find that the physician has
demonstrated a lack of professional competence to practice with
a reasonable degree of skill and safety for patients.

Any person may report to the board relevant facts about the
conduct of any physician or podiatrist in this state which in the
opinion of that person amounts to professional malpractice or
professional incompetence.

The board shall provide forms for filing reports pursuant to
this section. Reports submitted in other forms shall be accepted
by the board.

The filing of a report with the board pursuant to any
provision of this article, any investigation by the board or any
disposition of a case by the board does not preclude any action
by a hospital, other health care facility or professional society
comprised primarily of physicians or podiatrists to suspend,
restrict or revoke the privileges or membership of the physician
or podiatrist.

(c) The board may deny an application for license or other
authorization to practice medicine and surgery or podiatry in
this state and may discipline a physician or podiatrist licensed
or otherwise lawfully practicing in this state who, after a
hearing, has been adjudged by the board as unqualified due to any of the following reasons:

(1) Attempting to obtain, obtaining, renewing or attempting to renew a license to practice medicine and surgery or podiatry by bribery, fraudulent misrepresentation or through known error of the board;

(2) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude or directly relates to the practice of medicine. Any plea of nolo contendere is a conviction for the purposes of this subdivision;

(3) False or deceptive advertising;

(4) Aiding, assisting, procuring or advising any unauthorized person to practice medicine and surgery or podiatry contrary to law;

(5) Making or filing a report that the person knows to be false; intentionally or negligently failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record required by state or federal law; or inducing another person to do any of the foregoing. The reports and records as are herein covered mean only those that are signed in the capacity as a licensed physician or podiatrist;

(6) Requesting, receiving or paying directly or indirectly a payment, rebate, refund, commission, credit or other form of profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication or any other medical goods, services or devices used in connection with medical or other health care services;

(7) Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest unless the physician or podiatrist discloses in writing such interest to the patient. The written disclosure shall indicate that
the patient may choose any clinical laboratory for purposes of
having any laboratory work or assignment performed or any
pharmacy for purposes of purchasing any prescribed drug or
any other medical goods or devices used in connection with
medical or other health care services;

As used herein, "proprietary interest" does not include an
ownership interest in a building in which space is leased to a
clinical laboratory or pharmacy at the prevailing rate under a
lease arrangement that is not conditional upon the income or
gross receipts of the clinical laboratory or pharmacy;

(8) Exercising influence within a patient-physician relation-
ship for the purpose of engaging a patient in sexual activity;

(9) Making a deceptive, untrue or fraudulent representation
in the practice of medicine and surgery or podiatry;

(10) Soliciting patients, either personally or by an agent,
through the use of fraud, intimidation or undue influence;

(11) Failing to keep written records justifying the course of
treatment of a patient, the records to include, but not be limited
to, patient histories, examination and test results and treatment
rendered, if any;

(12) Exercising influence on a patient in such a way as to
exploit the patient for financial gain of the physician or podia-
trist or of a third party. Any influence includes, but is not
limited to, the promotion or sale of services, goods, appliances
or drugs;

(13) Prescribing, dispensing, administering, mixing or
otherwise preparing a prescription drug, including any con-
trolled substance under state or federal law, other than in good
faith and in a therapeutic manner in accordance with accepted
medical standards and in the course of the physician's or
podiatrist’s professional practice: Provided, That a physician
who discharges his or her professional obligation to relieve the
pain and suffering and promote the dignity and autonomy of
dying patients in his or her care, and in so doing, exceeds the
average dosage of a pain relieving controlled substance, in
Schedule II and III of the Uniform Control Substance Act, does not violate this article;

(14) Performing any procedure or prescribing any therapy that, by the accepted standards of medical practice in the community, would constitute experimentation on human subjects without first obtaining full, informed and written consent;

(15) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the person knows or has reason to know he or she is not competent to perform;

(16) Delegating professional responsibilities to a person when the physician or podiatrist delegating the responsibilities knows or has reason to know that the person is not qualified by training, experience or licensure to perform them;

(17) Violating any provision of this article or a rule or order of the board, or failing to comply with a subpoena or subpoena duces tecum issued by the board;

(18) Conspiring with any other person to commit an act or committing an act that would tend to coerce, intimidate or preclude another physician or podiatrist from lawfully advertising his or her services;

(19) Gross negligence in the use and control of prescription forms;

(20) Professional incompetence;

(21) The inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental disability, including deterioration through the aging process or loss of motor skill or abuse of drugs or alcohol. A physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or she can resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the
(d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant who, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same effect as a verdict or plea of guilt.

(e) The board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Except for complaints related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or fraudulent misrepresentation, any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of grounds for the complaint, shall be dismissed: Provided, That in cases of conduct alleged to be part of a pattern of similar misconduct or professional incapacity that, if continued, would pose risks of a serious or substantial nature to the physician or podiatrist’s current patients, the investigating body may conduct a limited investigation related to the physician or podiatrist’s current capacity and qualification to practice, and may recommend conditions, restrictions or limitations on the physician or podiatrist’s license to practice that it considers necessary for the protection of the public. Any report shall contain recommendations for any necessary disciplinary measures and shall be filed with the board within ninety days of any referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board after full
investigation shall take whatever action it deems appropriate, as
provided herein.

(f) The investigating body, as provided for in subsection (e) of this section, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to any such examination has the right, at his or her expense, to designate another physician to be present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is deemed to have given his or her consent to submit to all examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to any such examination under circumstances which the board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

(g) In addition to any other investigators it employs, the board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.

(h) In every disciplinary or licensure denial action, the board shall furnish the physician or podiatrist or applicant with written notice setting out with particularity the reasons for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all hearings. A
transcript of all hearings under this section shall be made, and
the respondent may obtain a copy of the transcript at his or her
expense. The physician or podiatrist has the right to defend
against any charge by the introduction of evidence, the right to
be represented by counsel, the right to present and cross-
examine witnesses and the right to have subpoenas and subpoe-
nas duces tecum issued on his or her behalf for the attendance
of witnesses and the production of documents. The board shall
make all its final actions public. The order shall contain the
terms of all action taken by the board.

(i) In disciplinary actions in which probable cause has been
found by the board, the board shall, within twenty days of the
date of service of the written notice of charges or sixty days
prior to the date of the scheduled hearing, whichever is sooner,
provide the respondent with the complete identity, address, and
telephone number of any person known to the board with
knowledge about the facts of any of the charges; provide a copy
of any statements in the possession of or under the control of
the board; provide a list of proposed witnesses with addresses
and telephone numbers, with a brief summary of his or her
anticipated testimony; provide disclosure of any trial expert
pursuant to the requirements of Rule 26(b)(4) of the West
Virginia Rules of Civil Procedure; provide inspection and
copying of the results of any reports of physical and mental
examinations or scientific tests or experiments; and provide a
list and copy of any proposed exhibit to be used at the hearing:
Provided, That the board shall not be required to furnish or
produce any materials which contain opinion work product
information or would be violative of the attorney-client
privilege. Within twenty days of the date of service of the
written notice of charges, the board shall be required to disclose
any exculpatory evidence with a continuing duty to do so
throughout the disciplinary process. Within thirty days of
receipt of the board’s mandatory discovery, the respondent shall
provide the board with the complete identity, address, and
telephone number of any person known to the respondent with
knowledge about the facts of any of the charges; provide a list
of proposed witnesses with addresses and telephone numbers,
340 to be called at hearing, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing.

(j) Whenever it finds any person unqualified because of any of the grounds set forth in subsection (c) of this section, the board may enter an order imposing one or more of the following:

(1) Deny his or her application for a license or other authorization to practice medicine and surgery or podiatry;

(2) Administer a public reprimand;

(3) Suspend, limit or restrict his or her license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of that person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;

(4) Revoke his or her license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances;

(5) Require him or her to submit to care, counseling or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;

(6) Require him or her to participate in a program of education prescribed by the board;

(7) Require him or her to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and

(8) Assess a civil fine of not less than one thousand dollars nor more than ten thousand dollars.
(k) Notwithstanding the provisions of section eight, article one, chapter thirty of this code, if the board determines the evidence in its possession indicates that a physician’s or podiatrist’s continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided for in subsection (i) of this section on a temporary basis and without a hearing, if institution of proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within fifteen days of the action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.

(l) Any person against whom disciplinary action is taken pursuant to the provisions of this article has the right to judicial review as provided in articles five and six, chapter twenty-nine-a of this code: Provided, That a circuit judge may also remand the matter to the board if it appears from competent evidence presented to it in support of a motion for remand that there is newly discovered evidence of such a character as ought to produce an opposite result at a second hearing on the merits before the board and:

(1) The evidence appears to have been discovered since the board hearing; and

(2) The physician or podiatrist exercised due diligence in asserting his or her evidence and that due diligence would not have secured the newly discovered evidence prior to the appeal.

Except with regard to an order of temporary suspension of a license for six months or less, a person may not practice medicine and surgery or podiatry or deliver health care services in violation of any disciplinary order revoking or limiting his or her license while any such review is pending. Within sixty days, the board shall report its final action regarding restriction, limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice privileges or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing
medical malpractice insurance in this state, the American
medical association, the American podiatry association,
professional societies of physicians or podiatrists in the state
and any entity responsible for the fiscal administration of
medicare and medicaid.

(m) Any person against whom disciplinary action has been
taken under the provisions of this article shall at reasonable
intervals be afforded an opportunity to demonstrate that he or
she can resume the practice of medicine and surgery or podiatry
on a general or limited basis. At the conclusion of a suspension,
limitation or restriction period, the physician or podiatrist has
the right to resume practice pursuant to the orders of the board:
Provided. That for a revocation pursuant to subsection (d) of
this section a reapplication may not be accepted for a period of
at least five years.

(n) Any entity, organization or person, including the board,
any member of the board, its agents or employees and any
entity or organization or its members referred to in this article;
any insurer, its agents or employees, a medical peer review
committee and a hospital governing board, its members or any
committee appointed by it acting without malice and without
gross negligence in making any report or other information
available to the board or a medical peer review committee
pursuant to law and any person acting without malice and
without gross negligence who assists in the organization,
investigation or preparation of any such report or information
or assists the board or a hospital governing body or any
committee in carrying out any of its duties or functions pro-
vided by law, is immune from civil or criminal liability, except
that the unlawful disclosure of confidential information
possessed by the board is a misdemeanor as provided for in this
article.

(o) A physician or podiatrist may request in writing to the
board a limitation on or the surrendering of his or her license to
practice medicine and surgery or podiatry or other appropriate
sanction as provided herein. The board may grant the request
and, if it considers it appropriate, may waive the commence-
ment or continuation of other proceedings under this section. A physician or podiatrist whose license is limited or surrendered or against whom other action is taken under this subsection has a right at reasonable intervals to petition for removal of any restriction or limitation on or for reinstatement of his or her license to practice medicine and surgery or podiatry.

(p) In every case considered by the board under this article regarding discipline or licensure, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of disqualification due to any reason set forth in subsection (c) of this section. If probable cause is found to exist, all proceedings on the charges shall be open to the public who shall be entitled to all reports, records, and nondeliberative materials introduced at the hearing, including the record of the final action taken: Provided, That any medical records, which were introduced at the hearing and which pertain to a person who has not expressly waived his or her right to the confidentiality of the records, may not be open to the public nor is the public entitled to the records.

(q) Notwithstanding any other provisions of this article, the board may at any time, on its own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the West Virginia state bar’s mediator referral service of certified mediators with expertise in professional disciplinary matters. The board and the physician or podiatrist may choose a mediator from this list. If the board and the physician or podiatrist are unable to agree on a mediator, the board shall designate a mediator from this listing by neutral rotation. The mediation shall not be considered a proceeding open to the public and any reports and records introduced at the mediation shall not become part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all mediation proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring
485 disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: Provided, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree in writing to do this.

§30-3-15. Medical corporations; podiatry corporations; application for registration; fees; notice to secretary of state of issuance of certificate; action by secretary of state; rights and limitations generally; biennial registration; when practice to cease; admissibility and effect of certificate signed by secretary of board; criminal penalty; severability.

(a) When one or more physicians duly licensed to practice medicine and surgery in this state under this article, or one or more physicians duly licensed under this article and one or more physicians duly licensed under article fourteen of this chapter, or one or more podiatrists duly licensed to practice podiatry in this state wish to form a medical or podiatry corporation, respectively, such physician or physicians or podiatrist or podiatrists shall file a written application therefor with the board on a form prescribed by it and shall furnish proof satisfactory to the board that each applicant is a duly licensed physician or podiatrist. A fee, not to exceed five hundred dollars, the amount of such fee to be set by the board, shall accompany each application. Upon its determination that each applicant is duly licensed, the board shall notify the secretary of state that a certificate of authorization has been issued to the person or persons making the application. When the secretary of state receives such notification from the board, he or she shall attach such authorization to the corporation application and, upon compliance by the corporation with the pertinent provisions of chapter thirty-one of this code, shall notify the incorporators that such corporation, through duly licensed physicians or through duly licensed podiatrists, may engage in the practice of medicine and surgery or the practice of podiatry.
(b) A medical corporation may practice medicine and surgery only through individual physicians duly licensed to practice medicine and surgery in this state and a podiatrist may practice podiatry only through individual podiatrists duly licensed to practice podiatry in this state, but such physicians or podiatrists may be employees rather than shareholders of such corporation, and nothing herein contained shall be construed to require a license for or other legal authorization of any individual employed by such corporation to perform services for which no license or other legal authorization is otherwise required. Nothing contained in this article is meant or intended to change in any way the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient or podiatrist-patient relationship nor is it meant or intended to change in any way the personal character of the physician-patient or podiatrist-patient relationship. A corporation holding such certificate of authorization shall register biennially, on or before the thirtieth day of June, on a form prescribed by the board, and shall pay an annual registration fee not to exceed three hundred dollars, the amount of such fee to be set by the board.

(c) A medical or podiatry corporation holding a certificate of authorization shall cease to engage in the practice of medicine and surgery or the practice of podiatry upon being notified by the board that any of its shareholders is no longer a duly licensed physician or podiatrist, or when any shares of such corporation have been sold or disposed of to a person who is not a duly licensed physician or podiatrist: Provided, That the personal representative of a deceased shareholder shall have a period, not to exceed twelve months from the date of such shareholder's death, to dispose of such shares; but nothing contained herein shall be construed as affecting the existence of such corporation or its right to continue to operate for all lawful purposes other than the practice of medicine and surgery or the practice of podiatry.

(d) No corporation shall practice medicine and surgery or any of its branches, or hold itself out as being capable of practicing medicine and surgery, or practice podiatry or hold itself out as being capable of practicing podiatry, without a
certificate from the board; nor shall any corporation practice
medicine and surgery or any of its branches or hold itself out as
being capable of practicing medicine and surgery, or practice
podiatry or hold itself out as being capable of practicing
podiatry, after its certificate has been revoked, or if suspended,
during the term of such suspension. A certificate signed by the
secretary of the board to which is affixed the official seal of the
board to the effect that it appears from the records of the board
that no such certificate to practice medicine and surgery or any
of its branches, or to practice podiatry, in the state has been
issued to any such corporation specified therein or that such
certificate has been revoked or suspended shall be admissible
in evidence in all courts of this state and shall be prima facie
evidence of the facts stated therein.

(e) Any officer, shareholder or employee of such corpora-
tion who participates in a violation of any provision of this
section shall be guilty of a misdemeanor and, upon conviction
thereof, shall be fined not exceeding one thousand dollars.

§30-3-18. Continuation of board.

The board of medicine shall continue to exist until the first
day of July, two thousand, pursuant to the provisions of article
ten, chapter four of this code, to allow for the completion of a
preliminary performance review by the joint committee on
government operations.

CHAPTER 211

(Com. Sub. for H. B. 2961 — By Delegates Amores,
Ashley, Azinger, Beane and Martin)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter thirty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section ten-a; and to
amend article fourteen of said chapter by adding thereto a new section, designated section twelve-b, all relating to establishing a special volunteer medical license for retired or retiring physicians treating indigents and the needy without compensation; providing for issuance without payment of fees; specifying requirements of license; providing for civil immunity for voluntary medical services rendered to indigents; limitations thereon; and required insurance coverage.

Be it enacted by the Legislature of West Virginia:

That article three, chapter thirty 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; and that article fourteen of said chapter be amended by adding thereto a new section, designated section twelve-b, all to read as follows:


ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10a. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

(a) There is hereby established a special volunteer medical license for physicians retired or retiring from the active practice of medicine who wish to donate their expertise for the medical care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer medical license shall be issued by the West Virginia board of medicine to physicians licensed or otherwise eligible for licensure under this article and the rules promulgated hereunder without the payment of any application fee, license fee or renewal fee, shall be issued for a fiscal year or part thereof, and shall be renewable annually. The board shall develop application forms for the special license provided for in this subsection which shall contain the physician's acknowledgment that: (1) The physician's practice under the special volunteer medical license will be exclusively and totally devoted to providing medical care to needy and indigent persons in West Virginia;
(2) the physician will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any medical services rendered under the special volunteer medical license; (3) the physician will supply any supporting documentation that the board may reasonably require; and (4) the physician agrees to continue to participate in continuing medical education as required of physicians in active practice.

(b) Any physician who renders any medical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer medical license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the clinic unless the act or omission was the result of the physician's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the physician and the clinic pursuant to which the physician will provide voluntary noncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the physician at the clinic: Provided, That any clinic entering into such written agreement shall be required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (a) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge shall not be relieved from imputed liability for the negligent acts of a physician rendering voluntary medical services at or for the clinic under a special volunteer medical license authorized under subsection (a) of this section.

(d) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section ten of this article and in the legislative rules promulgated hereunder, except the fee require-
ments of subsections (b) and (d) of said section and of the legislative rule promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer medical license to any physician whose medical license is or has been subject to any disciplinary action or to any physician who has surrendered a medical license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her medical license, or who has elected to place a medical license in inactive status in lieu of having a complaint initiated or other action taken against his or her medical license, or who have been denied a medical license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physician covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a physician who holds a special volunteer medical license.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12b. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

(a) There is hereby established a special volunteer medical license for physicians retired or retiring from the active practice of osteopathy who wish to donate their expertise for the medical care and treatment of indigent and needy patients in the clinic settings of the clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer medical license shall be issued by the West Virginia board of osteopathy to physicians licensed or otherwise eligible for licensure under this article and the rules promulgated hereunder without the payment of any application fee, license fee or renewal fee, shall be issued for a fiscal year or part thereof, and shall be renewable annually. The board shall
develop application forms for the special license provided for in this subsection which shall contain the physician's acknowledgment that: (1) The physician's practice under the special volunteer medical license will be exclusively and totally devoted to providing medical care to needy and indigent persons in West Virginia; (2) the physician will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any medical services rendered under the special volunteer medical license; (3) the physician will supply any supporting documentation that the board may reasonably require; and (4) the physician agrees to continue to participate in continuing medical education as required of physicians in active practice.

(b) Any physician who renders any medical service to indigent and needy patients of clinics organized, in whole or in part, for the delivery of health care services without charge under a special volunteer medical license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the clinic unless the act or omission was the result of the physician's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the physician and the clinic pursuant to which the physician will provide voluntary noncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the physician at the clinic: Provided, That any clinic entering into such written agreement shall be required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (a) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge shall not be relieved from imputed liability for the negligent acts of a physician rendering voluntary medical services at or for the clinic under a special volunteer medical license authorized under subsection (a) of this section.
(d) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section ten of this article and in the legislative rules promulgated hereunder, except the fee requirements of subsections (b) and (d) of said section and of the legislative rule promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer medical license to any physician whose medical license is or has been subject to any disciplinary action or to any physician who has surrendered a medical license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her medical license, or who has elected to place a medical license in inactive status in lieu of having a complaint initiated or other action taken against his or her medical license, or who have been denied a medical license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physician covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a physician who holds a special volunteer medical license.

CHAPTER 212

(H. B. 2796 — By Delegates Border, Leach and Perdue (By Request))

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]
thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine-a; and to amend and reenact section seven, article eight, chapter sixty-a of said code, all relating to fees for licensing and permits to operate for pharmacists, pharmacies, drugstores and wholesale drug distributors payable to the West Virginia Board of Pharmacy; establishing an initial fee and a renewal fee for an application for a permit for mail-order pharmacies and drugstores; increasing the renewal fees for licensing and operation permits for pharmacists; increasing the licensing fee for wholesale drug distributors; and authorizing future fee modifications to be made by legislative rule.

Be it enacted by the Legislature of West Virginia:

That sections six-a, nine and fourteen, article five, chapter thirty 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 nine-a; and that section seven, article eight, chapter sixty-a of said code be amended and reenacted, all to read as follows:

Chapter
30. Professions and Occupations.
60a. Uniform Controlled Substances Act.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-6a. Permits for mail-order houses.
§30-5-9. Fees.
§30-5-9a. Authorization for future fee modifications to be made by rule.
§30-5-14. Pharmacies to be registered; permit to operate; fees;
pharmacist to conduct business.

§30-5-6a. Permits for mail-order houses.

1 (a) Every mail-order house which dispenses drugs or medicines through the United States mail or otherwise from any point in the state of West Virginia to any point outside of the state of West Virginia shall be registered as a pharmacy or drugstore pursuant to the provisions of section fourteen of this
Provided, That the provisions of this subsection do not apply to any mail-order house which operates solely as a wholesale distributor. Every initial application for a permit shall be accompanied by a fee of five hundred dollars. The fee for renewal of the permit or license shall be five hundred dollars annually.

(b) Every mail-order house which dispenses drugs or medicines through the United States mail or otherwise from any point outside of the state of West Virginia to any point within the state of West Virginia shall, as a condition precedent to being qualified and authorized to transact business in the state of West Virginia, annually register with the board of pharmacy to conduct such business in this state. Every initial application for a permit shall be accompanied by a fee of five hundred dollars. The fee for renewal of the permit or license shall be five hundred dollars annually. Every business shall be required to provide to the board of pharmacy satisfactory evidence that it qualifies as a pharmacy or drugstore and that the business is licensed or registered as a pharmacy or drugstore in the state where the business dispenses prescriptions by mail order to residents of this state. The board of pharmacy shall promulgate rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, for the procedures of registration pursuant to this subsection: Provided, That the provisions of this subsection do not apply to any mail-order house which operates solely as a wholesale distributor.

§30-5-9. Fees.

The board of pharmacy shall charge and collect the following fees, in addition to those provided in article one of this chapter and in sections five, fourteen and sixteen of this article: For renewing the licensure of a pharmacist, fifty dollars; to license an intern pharmacist, ten dollars plus five dollars for each of the remaining periods of his or her internship; to register a consultant pharmacist, twenty dollars for the initial application and ten dollars for each additional application; and to register a pharmacy technician, twenty-five dollars and ten dollars for each renewal.
§30-5-9a. Authorization for future fee modifications to be made by rule.

1. Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-nine, the board may set any fee authorized under this article by legislative rule, in accordance with article three, chapter twenty-nine-a of this code.

§30-5-14. Pharmacies to be registered; permit to operate; fees; pharmacist to conduct business.

1. (a) The board of pharmacy shall require and provide for the annual registration of every pharmacy doing business in this state. Any person, firm, corporation or partnership desiring to operate, maintain, open or establish a pharmacy in this state shall apply to the board of pharmacy for a permit to do so. The application for such permit shall be made on a form prescribed and furnished by the board of pharmacy, which, when properly executed, shall indicate the owner, manager, trustee, lessee, receiver, or other person or persons desiring such permit, as well as the location of such pharmacy, including street and number, and any other information as the board of pharmacy may require. If it is desired to operate, maintain, open or establish more than one pharmacy, separate application shall be made and separate permits or licenses shall be issued for each.

2. (b) Every initial application for a permit shall be accompanied by the required fee of one hundred fifty dollars. The fee for renewal of such permit or license shall be one hundred dollars annually.

3. (c) If an application is approved, the secretary of the board of pharmacy shall issue to the applicant a permit or license for each pharmacy for which application is made. Permits or licenses issued under this section shall not be transferable and shall expire on the thirtieth day of June of each calendar year, and if application for renewal of permit or license is not made on or before that date, or a new one granted on or before the first day of August, following, the old permit or license shall lapse and become null and void and shall require an inspection.
of the pharmacy and a fee of one hundred fifty dollars plus one hundred fifty dollars for the inspection.

(d) Every place of business so registered shall employ a pharmacist in charge and operate in compliance with the general provisions governing the practice of pharmacy and the operation of a pharmacy.

(e) The provisions of this section shall have no application to the sale of nonprescription drugs which are not required to be dispensed pursuant to a practitioner’s prescription.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.


§60A-8-7. Wholesale drug distributor licensing requirements.

All wholesale distributors and pharmacy distributors shall be subject to the following requirements:

(a) No person or distribution outlet may act as a wholesale drug distributor without first obtaining a license to do so from the board of pharmacy and paying any reasonable fee required by the board of pharmacy, such fee not to exceed four hundred dollars per year.

(b) The board of pharmacy may grant a temporary license when a wholesale drug distributor first applies for a license to operate within this state and the temporary license shall remain valid until the board of pharmacy finds that the applicant meets or fails to meet the requirements for regular licensure, except that no temporary license shall be valid for more than ninety days from the date of issuance. Any temporary license issued pursuant to this subdivision shall be renewable for a similar period of time not to exceed ninety days pursuant to policies and procedures to be prescribed by the board of pharmacy.

(c) No license may be issued or renewed for a wholesale drug distributor to operate unless the distributor operates in a manner prescribed by law and according to the rules promulgated by the board of pharmacy with respect thereto.
(d) The board of pharmacy may require a separate license for each facility directly or indirectly owned or operated by the same business entity within this state, or for a parent entity with divisions, subsidiaries, or affiliate companies within this state when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

(e) (1) As a condition for receiving and retaining any wholesale drug distributor license issued pursuant to this article, each applicant shall satisfy the board of pharmacy that it has and will continuously maintain:

   (A) Acceptable storage and handling conditions plus facilities standards;

   (B) Minimum liability and other insurance as may be required under any applicable federal or state law;

   (C) A security system which includes after hours central alarm or comparable entry detection capability, restricted premises access, adequate outside perimeter lighting, comprehensive employment applicant screening and safeguards against employee theft;

   (D) An electronic, manual or any other reasonable system of records describing all wholesale distributor activities governed by this article for the two-year period following disposition of each product and being reasonably accessible as defined by board of pharmacy regulations during any inspection authorized by the board of pharmacy;

   (E) Officers, directors, managers and other persons in charge of wholesale drug distribution, storage and handling, who must at all times demonstrate and maintain their capability of conducting business according to sound financial practices as well as state and federal law;

   (F) Complete, updated information to be provided the board of pharmacy as a condition for obtaining and retaining a license about each wholesale distributor to be licensed under this article including all pertinent licensee ownership and other key personnel and facilities information determined necessary for
enforcement of this article, with any changes in the information
to be submitted at the time of license renewal or within twelve
months from the date of the change, whichever occurs first;

(G) Written policies and procedures which assure reason-
able wholesale distributor preparation for protection against and
handling of any facility security or operation problems,
including, but not limited to, those caused by natural disaster or
government emergency, inventory inaccuracies or product
shipping and receiving, outdated product or other unauthorized
product control, appropriate disposition of returned goods and
product recalls;

(H) Sufficient inspection procedures for all incoming and
outgoing product shipments; and

(I) Operations in compliance with all federal legal require-
ments applicable to wholesale drug distribution.

(2) The board of pharmacy shall consider, at a minimum,
the following factors in reviewing the qualifications of persons
who engage in wholesale distribution of prescription drugs with
this state:

(A) Any conviction of the applicant under any federal, state
or local laws relating to drug samples, wholesale or retail drug
distribution or distribution of controlled substances;

(B) Any felony convictions of the applicant under federal,
state or local laws;

(C) The applicant’s past experience in the manufacture or
distribution of prescription drugs, including controlled sub-
stances;

(D) The furnishing by the applicant of false or fraudulent
material in any application made in connection with drug
manufacturing or distribution;

(E) Suspension or revocation by federal, state or local
government of any license currently or previously held by the
applicant for the manufacture or distribution of any drug,
including controlled substances;
(F) Compliance with licensing requirements under previously granted licenses, if any;

(G) Compliance with requirements to maintain and make available to the board of pharmacy or to federal, state or local law-enforcement officials those records required by this article;

and

(H) Any other factors or qualifications the board of pharmacy considers relevant to and consistent with the public health and safety, including whether the granting of the license would not be in the public interest.

(3) All requirements set forth in this subsection shall conform to wholesale drug distributor licensing guidelines formally adopted by the United States food and drug administration (FDA); and in case of conflict between any wholesale drug distributor licensing requirement imposed by the board of pharmacy pursuant to this subsection and any food and drug administration wholesale drug distributor licensing guideline, the latter shall control.

(f) An agent or employee of any licensed wholesale drug distributor need not seek licensure under this section and may lawfully possess pharmaceutical drugs when the agent or employee is acting in the usual course of business or employment.

(g) The issuance of a license pursuant to this article does not change or affect tax liability imposed by this state’s department of tax and revenue on any wholesale drug distributor.

(h) The board of pharmacy may adopt rules pursuant to section nine of this article which permit out-of-state wholesale drug distributors to obtain any license required by this article on the basis of reciprocity to the extent that: (i) An out-of-state wholesale drug distributor possesses a valid license granted by another state pursuant to legal standards comparable to those which must be met by a wholesale drug distributor of this state as prerequisites for obtaining a license under the laws of this state; and (ii) such other state would extend reciprocal treatment under its own laws to a wholesale drug distributor of this state.
AN ACT to amend article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to funeral directors and embalmers; providing for a special emeritus license for licensees sixty-five or older with at least ten years experience; and exempting licensee from continuing education requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-17. Special emeritus license for embalmers and funeral directors.

1 Notwithstanding any other provision of this article, the board shall establish a special emeritus license for any licensed embalmer or funeral director sixty-five or older. After becoming sixty-five years of age with at least ten years experience as a licensed embalmer or licensed funeral director, a licensed embalmer or funeral director is entitled to be issued a license as an embalmer emeritus or funeral director emeritus. The emeritus license shall entitle the holder to all the rights and privileges of the license previously held by the licensee, except that a licensee emeritus shall be exempt from all continuing education requirements set forth in section three of this article.
12 The annual license fee for an embalmer emeritus or funeral
director emeritus shall be no more than that required of a
licensed embalmer or licensed funeral director.

CHAPTER 214

(Com. Sub. for H. B. 2867 — By Delegates Boggs, Martin,
Varner, Douglas, Cannon and Facemyer)

[Passed March 13, 1999; in effect ninety
days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nineteen, chapter
thirty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to general requirements and
categories for licensing and registration of foresters; requiring
rules; authorizing rules relating to a code of ethics.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. FORESTERS.

§30-19-6. General requirements and categories of licensure.

1 (a) The following is the minimum evidence required to
2 satisfy the board that the applicant is qualified for licensure and
3 entitled to use the title of “registered professional forester,”
4 “professional forester,” “forester” or other title connoting to the
5 general public that the applicant is a registered forester quali-
6 fied to perform professional forestry services:
7 (1) Graduation from a four-year degree program in profes-
8 sional forestry from an accredited college or university plus two
9 years related experience in the field of forestry as defined by
10 rule of the board; or
11 (2) Graduation from a two-year technical forestry program
12 in a program recognized by the society of American foresters,
plus a bachelor’s degree from an accredited college or university and four years related experience in the field of forestry as defined by rule of the board.

(b) The following is the minimum evidence required to satisfy the board that the applicant is qualified for licensure and entitled to use the title of “registered forestry technician” or “forestry technician”: Graduation from a two-year technical forestry program recognized by the society of American foresters and four years related experience in the field of forestry as defined by rule of the board.

(c) Evidence of graduation and completion of required courses shall be presented by means of an official transcript which shall be filed permanently with the board. Upon the effective date of this section, the board may adopt an interpretive rule pursuant to the provisions of article three, chapter twenty-nine-a of this code, for the limited purpose of providing information and guidance to prospective applicants and the public related to the qualifying experience considered acceptable to the board pursuant to this section and to the job titles acceptable for use by persons obtaining qualifying experience, until such time as a legislative rule is made effective. On or before the first day of July, one thousand nine hundred ninety-nine, the board shall propose for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code, rules authorized by this article and article one of this chapter, which rules must include provisions relating to a code of ethics for registered professional foresters and registered forestry technicians.

CHAPTER 215


[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections two, four, five, six, seven, eight, nine, ten and eleven, article twenty, chapter thirty 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 fifteen, all relating to the practice of physical therapy; revising definitions; requiring rules; removing requirement of direct supervision of physical therapy assistants; removing language on physician referral; allowing board to contract for administration of examinations; removing requirement of providing free list of licensees; clarifying that fines be paid into the general revenue fund; revising educational and licensure requirements; empowering the board to set fees by rule; providing for biennial licensure renewal; requiring meetings; powers of board with respect to suspension, revocation or nonrenewal of license; limitations on temporary permits; and providing for a termination date.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, six, seven, eight, nine, ten and eleven, article twenty, chapter thirty 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 fifteen, all to read as follows:

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-2. Definitions.

§30-20-4. West Virginia board of physical therapy continued; members, terms, meetings, officers, oath, compensation and expenses; general provisions.

§30-20-5. Powers and duties of board; funds of board.

§30-20-6. Qualifications of applicants for license; application fee.

§30-20-7. Examination of applicants.

§30-20-8. Issuance of license; renewal of license; renewal fee; display of license.


§30-20-10. Suspension or revocation of license or temporary permit.


§30-20-15. Termination date.

§30-20-2. Definitions.

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

2 (a) "Applicant" means any person making application for an original or renewal license or a temporary permit under the provisions of this article.
(b) "Board" means the West Virginia board of physical therapy.

(c) "Licensed physical therapist" means any physical therapist holding a license or temporary permit issued under the provisions of this article or under the former provisions of this article.

(d) "Licensed physical therapy assistant" means any physical therapy assistant holding a license or temporary permit issued under the provisions of this article.

(e) "Licensee" means any person holding a license or temporary permit issued under the provisions of this article or under the former provisions of this article.

(f) "Physical therapy" means the therapeutic treatment of any person by the use of massage, mechanical stimulation, heat, cold, light, air, water, electricity, sound and exercise, including mobilization of the joints and training in functional activities, for the purpose of correcting or alleviating any physical or mental condition or preventing the development of any physical or mental disability, and the performance of neuro-muscular-skeletal tests and measurements as an aid in diagnosis, evaluation or determination of the existence of and the extent of any body malfunction: Provided, That electromyography examination and electrodiagnostic studies other than the determination of chronaxia and strength duration curves shall not be performed except under the supervision of a physician electromyographer and electrodiagnostician. Physical therapy does not include the use of radiology and radium for diagnostic and therapeutic purposes, or the use of electricity for surgical purposes, including cauterization.

(g) "Physical therapist" means a person who engages in the practice of physical therapy.

(h) "Physical therapy aide" means a person, other than a physical therapy assistant, who assists a licensed physical therapist in the practice of physical therapy under the direct supervision of such licensed physical therapist and who also
performs activities supportive of but not involving assistance in
the practice of physical therapy.

(1) As contained in this section, the term “direct supervi-
sion” means the actual physical presence of the physical
therapist in the immediate treatment area where the treatment
is being rendered.

(i) “Physical therapy assistant” means a person who assists
in the practice of physical therapy by performing patient-related
activities delegated to him or her by a licensed physical
therapist and performed under the supervision of a licensed
physical therapist, with the scope of such supervision to be
defined by the board by legislative rule, and which patient-
related activities are commensurate with his or her education
and training, including physical therapy procedures, but not the
performance of evaluation procedures or determination and
modification of patient programs: Provided, That the board
shall, on or before the first day of July, one thousand nine
hundred ninety-nine, propose rules for legislative approval in
accordance with article three, chapter twenty-nine-a of this
code, which rules shall govern the scope of supervision of
physical therapy assistants.

(j) “Practice of physical therapy” means the rendering or
offering to render for a fee, salary or other compensation,
monetary or otherwise, any service involving physical therapy.
However, for the purpose of section three of this article, the
term “practice of physical therapy” shall not include:

(1) Teaching physical therapy as part of employment at an
institution of higher learning;

(2) The activities of a student of physical therapy, physical
therapy extern or physical therapy intern, which activities are
a part of and are engaged in pursuant to a course of study at an
institution of higher learning, including, but not limited to,
activities conducted at the institution of higher learning and
activities conducted outside the institution if under the direct
supervision of a licensed physical therapist;

(3) The activities of a physical therapy aide if all activities
of such physical therapy aide involving assistance in the
practice of physical therapy are performed under the direct
supervision of a licensed physical therapist; or

(4) The administration of simple massages and the opera-
tion of health clubs so long as not intended to constitute or
represent the practice of physical therapy.

§30-20-4. West Virginia board of physical therapy continued;
members, terms, meetings, officers, oath, compen-
sation and expenses; general provisions.

(a) The West Virginia state board of examiners and
registration of physical therapists heretofore created shall
continue in existence but on and after the effective date of this
article shall be known and designated as “the West Virginia
board of physical therapy”, and shall consist of five members
appointed by the governor by and with the advice and consent
of the Senate. The three members of the board in office on the
effective date of this article shall, unless sooner removed,
continue to serve until their terms expire and until their
successors have been appointed and have qualified. Members
shall be appointed for overlapping terms of five years, so that
one term expires each year, or until their successors have been
appointed and have qualified. Any vacancy shall be filled by
appointment by the governor for the unexpired term of the
member whose office shall be vacant and any such appointment
shall be made within sixty days of the occurrence of such
vacancy. The governor may remove any member of the board
in case of incompetency, neglect of duty, gross immorality or
malfeasance in office.

(b) Each member of the board must be licensed under the
provisions of this article or under the former provisions of this
article, have at least three years’ experience as a physical
therapist and be actively engaged in the practice of physical
therapy. Members may be reappointed for any number of terms.
Before entering upon the performance of this duty, each
member shall take and subscribe to the oath prescribed by
section five, article IV of the constitution of this state.

(c) The board shall elect from its membership a chairman
and secretary who shall serve at the will and pleasure of the
board. A majority of the members of the board shall constitute a quorum and meetings shall be held at the call of the chairman or upon the written request of three members at such time and place as designated in such call or request, and, in any event, the board shall meet at least once annually to transact business as may come before it. Members may be paid such reasonable compensation as the board may from time to time determine, and in addition may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties, which compensation and expenses shall be paid in accordance with the provisions of subsection (b), section five of this article.

§30-20-5. Powers and duties of board; funds of board.

(a) The board shall:

1. Examine applicants and determine their eligibility for a license or temporary permit to engage in the practice of physical therapy or to act as a physical therapy assistant, as the case may be;

2. Provide for the administration of an examination of applicants for a license to engage in the practice of physical therapy and a separate examination of applicants for a license to act as a physical therapy assistant;

3. Determine the time and place for any such examinations and the passing score for each such separate examination;

4. Propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code implementing the provisions of this article and the powers and duties conferred upon the board hereby, including, but not limited to:

(A) Reasonable rules establishing standards to ensure that the activities of a licensed physical therapy assistant are performed in accordance with the definitional requirements of a physical therapy assistant as specified in subsection (i), section two of this article, which reasonable rules shall require that there be no more than two physical therapy assistants licensed to practice in this state for every physical therapist so
licensed and shall require that no more than two physical
therapy assistants be performing under the supervision of a
licensed physical therapist at any one time;

(B) Reasonable rules establishing standards to ensure that
those activities of a physical therapy aide are performed in
accordance with the definitional requirements specified in
subsection (h), section two of this article; and

(C) Rules establishing reasonable licensing and examina-
tion fees as provided in this article and in accordance with
section six, article one, chapter thirty of this code;

(5) Issue, renew, deny, suspend or revoke licenses and
temporary permits to engage in the practice of physical therapy
or licenses and temporary permits to act as physical therapy
assistants in accordance with the provisions of this article and,
in accordance with the administrative procedures hereinafter
provided, may renew, affirm, reverse, vacate or modify its order
with respect to any such denial, suspension or revocation;

(6) Investigate alleged violations of any provision of this
article, any reasonable rule promulgated hereunder and any
order or final decision of the board and take appropriate
disciplinary action against any licensee for the violation thereof
or institute appropriate legal action for the enforcement of any
provision of this article, any reasonable rule promulgated
hereunder and any order or final decision of the board or take
such disciplinary action and institute such legal action;

(7) Purchase or rent necessary office space, equipment and
supplies and employ, direct, discharge and define the duties of
an executive secretary and other full-time or part-time profes-
sional, clerical or other personnel necessary to effectuate the
provisions of this article;

(8) Maintain a register listing the name of every licensed
physical therapist and licensed physical therapy assistant, his or
her last known place of business or employment and last known
residence, and the date and certificate number of his or her
license; prepare annually from such register a list of every such
licensed physical therapist and licensed physical therapy
assistant; furnish the list to any hospital, physician or other interested person who makes application therefor and who pays to the board the reasonable cost of the copy of such list;

9. Keep accurate and complete records of its proceedings, certify the same as may be appropriate and submit to the governor a report on the transactions of the board including an accounting of all money received and disbursed;

10. Whenever it deems it appropriate, confer with the attorney general or his or her assistants in connection with all legal matters and questions, whose responsibility it shall be to render all legal assistance required; and

11. Take such other action as may be reasonably necessary and appropriate to effectuate the provisions of this article.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him or her with the treasurer of the state and credited to an account to be known as the "West Virginia Board of Physical Therapy": Provided, That all moneys collected as fines shall be paid into the general revenue fund. The compensation of and the reimbursement of all reasonable and necessary expenses actually incurred by the members of the board and all other costs and expenses incurred by the board in the administration of this article shall be paid from the board's fund, and no part of the state's general revenue fund shall be expended for such purpose.

§30-20-6. Qualifications of applicants for license; application fee.

(a) To be eligible for a license to engage in the practice of physical therapy, the applicant must:

1. Be at least eighteen years of age;

2. Be of good moral character;

3. Not be addicted to the intemperate use of alcohol or narcotic drugs or other controlled substances;

4. Not have been convicted of a felony in any state or federal court in this or any other state within ten years preced-
ing the date of application for license, which conviction remains
unreversed; and not have been convicted of a felony in any state
or federal court in this or any other state at any time if the
offense for which he or she was convicted related to the
practice of physical therapy, which conviction remains unre-
versed;

(5) Present evidence that the applicant is a graduate of an
accredited school of physical therapy approved by the commis-
sion on accreditation in physical therapy education and the
board: Provided, That any person who received his or her
education in physical therapy outside of the United States may
qualify for a license by fulfilling the requirements specified by
the commission on accreditation in physical therapy education
and the board, including successful completion of a period of
supervised clinical experience; and

(6) Either have passed the examination prescribed by the
board for a license to engage in the practice of physical therapy,
or be entitled to be licensed without examination as provided in
subsection (d) of this section.

(b) To be eligible for a license to act as a physical therapy
assistant, the applicant must:

(1) Satisfy the requirements of subdivisions (1) through (4),
subsection (a) of this section;

(2) Present evidence that he or she is a graduate of a two-
year college level education program for physical therapy
assistants which meets the standards established by the com-
mission on accreditation in physical therapy education and the
board; and

(3) Either have passed the examination prescribed by the
board for a license to act as a physical therapy assistant, or be
entitled to be licensed without examination as provided in
subsection (d) of this section.

(c) Although an applicant does not meet the educational
requirement specified in subdivision (2), subsection (b) of this
section, the board may, nevertheless, issue a license to act as a
physical therapy assistant to such applicant if such applicant: (i) Presents evidence that he or she has a high school diploma or its equivalent; (ii) meets the requirements of subdivision (1), subsection (b) of this section; (iii) presents sufficient and satisfactory written evidence to the board on or before the first day of July, one thousand nine hundred seventy-nine, that such applicant has been employed as a physical therapy aide under the supervision of a licensed physical therapist in this state on a full-time basis for a continuous period of at least two years, or for cumulative periods of time either full-time or part-time which equal two years full-time employment, between the first day of January, one thousand nine hundred seventy-one, and the first day of July, one thousand nine hundred seventy-nine; and (iv) successfully passes the examination required for a license to act as a physical therapy assistant: Provided, That such applicant shall be afforded only two opportunities to pass such examination.

(d) The board may issue a license to practice physical therapy or a license to act as a physical therapy assistant, without examination, to any applicant who holds a valid license or is registered to engage in the practice of physical therapy or to act as a physical therapy assistant, as the case may be, issued to him or her under the laws of another state or territory or possession of the United States: Provided, That the applicant’s qualifications are in the opinion of the board equal to or greater than the requirements of this article and the rules promulgated by the board.

(e) Any applicant for a license under the provisions of subsection (a), (b), (c) or (d) of this section shall submit an application therefor at such time, in such manner, on such forms and containing such information as the board shall from time to time by reasonable rule prescribe, and pay to the board a nonrefundable application fee which shall be established by the board by legislative rule.

§30-20-7. Examination of applicants.

The board shall offer the prescribed examination to applicants for a license to engage in the practice of physical
therapy and the prescribed examination to applicants for a license to act as a physical therapy assistant, who meet the appropriate other requirements of section six of this article. Examinations shall be offered within this state, at least once each year, at such time and place as the board shall determine.

§30-20-8. Issuance of license; renewal of license; renewal fee; display of license.

(a) Whenever the board finds that an applicant meets all of the requirements of this article for a license to engage in the practice of physical therapy or to act as a physical therapy assistant, as the case may be, it shall forthwith issue to him or her such license; and otherwise the board shall deny the same.

(b) Every licensee shall renew his or her license every two years at such time and upon such forms as prescribed by the board, and upon the payment of a license fee established by the board by legislative rule. Any license which is not so renewed shall automatically lapse. A license which has lapsed may be renewed within five years of its expiration date by payment to the board of the appropriate renewal fee for each year or part thereof during which the license was not renewed. After the expiration of a five-year period, a license may be renewed only by complying with the provisions herein relating to the issuance of an original license.

(c) A licensee desiring to cease engaging in the practice of physical therapy temporarily or to cease acting temporarily as a physical therapy assistant shall send a written notice to the board. Upon receipt of the notice, the board shall place the name of the person upon the inactive list. While his or her name remains on this list, the person shall not be subject to the payment of any fee and shall not engage in the practice of physical therapy or act as a physical therapy assistant, as the case may be, in this state. When the person again desires to engage in the practice of physical therapy or to act as a physical therapy assistant, application for renewal of the license and the payment of a renewal fee for the then current year shall be made to the board.
30 (d) The board may deny any application for renewal of a license for any reason which would justify the denial of an original application for a license.

33 (e) The board shall prescribe the form of licenses and each license shall be conspicuously displayed by the licensee at his or her principal place of practice.

36 (f) Any license issued under the former provisions of this article, which license remains unsuspended and unrevoked, shall be valid and considered for all purposes as having been issued under the provisions of this article and may be renewed, suspended or revoked as licenses issued under the provisions of this article, and any license issued under the former provisions of this article which has lapsed or shall hereafter lapse is subject to the provisions of subsection (b) of this section pertaining to the lapse of a license issued under the provisions of this article and the renewal thereof.


1 (a) Upon proper application and the payment of a nonrefundable fee which shall be established by the board by legislative rule, the board may issue, without examination, a temporary permit to engage in the practice of physical therapy in this state:

6 (1) To any applicant who meets the requirements of subdivisions (1) through (5), subsection (a), section six of this article and who has applied to take the examination. A temporary permit so issued shall expire thirty days after the permittee receives notice of the results of the examination, if the permittee receives a passing score on the examination. The temporary permit shall expire immediately if the permittee receives a failing score on the examination. An applicant under this subsection may be issued only one temporary permit, and upon the expiration of that permit, may not practice as a physical therapist until fully licensed under the provisions of this article. In no event may a permittee practice on a temporary permit beyond a period of ninety consecutive days. A temporary permittee under this subsection shall work under the
supervision of a licensed physical therapist, with the scope of such supervision to be defined by the board by legislative rule; and

(2) To an applicant who is licensed outside of this state and who meets the requirements of subdivisions (1) through (5), subsection (a), section six of this article, which temporary permit shall be valid only for a period of ninety consecutive days.

(b) Upon proper application and the payment of a nonrefundable fee which shall be established by the board by legislative rule, the board may issue, without examination, a temporary permit to act as a physical therapy assistant in this state:

(1) To an applicant who meets the requirements of subdivisions (1) and (2), subsection (b), section six of this article. A temporary permit so issued shall expire thirty days after the permittee receives notice of the results of the examination, if the permittee receives a passing score on the examination. The temporary permit shall expire immediately if the permittee receives a failing score on the examination. An applicant under this subsection may be issued only one temporary permit, and upon the expiration of that permit, may not practice as a physical therapy assistant until fully licensed under the provisions of this article. In no event may a permittee practice on a temporary permit beyond a period of ninety consecutive days. A temporary permittee under this subsection shall work under the supervision of a licensed physical therapist, with the scope of such supervision to be defined by the board by legislative rule; and

(2) To an applicant who is licensed outside of this state and who meets the requirements of subdivisions (1) and (2), subsection (b), section six of this article, which temporary permit shall be valid only for a period of ninety consecutive days.

§30-20-10. Suspension or revocation of license or temporary permit.
(a) The board may at any time upon its own motion, and shall upon the written complaint of any person, conduct an investigation to determine whether there are any grounds for the suspension or revocation of a license or temporary permit issued under the provisions of this article.

(b) The board shall have the authority to reprimand, enter into consent decrees, enter into probation orders, levy fines not to exceed one thousand dollars per day per violation, assess administration fees, suspend or revoke the license or temporary permit of any licensee who the board determines has:

(1) Used narcotic drugs, other controlled substances or alcohol to the extent that it affects his or her professional competency; or

(2) Been convicted of violating any state or federal law relating to controlled substances, which conviction remains unreversed;

(3) Been, in the judgment of the board, guilty of immoral or unprofessional conduct;

(4) Been convicted of a felony or a crime involving moral turpitude;

(5) Been declared mentally incompetent by a court of competent jurisdiction;

(6) Obtained or attempted to obtain a license issued under the provisions of this article by fraud or willful misrepresentation;

(7) Been grossly negligent in the practice of physical therapy or in acting as a physical therapy assistant, as the case may be;

(8) Treated or undertaken to treat a human being otherwise than by physical therapy and as authorized by this article;

(9) Failed or refused to comply with the provisions of this article or any reasonable rule promulgated by the board hereunder or any order or final decision of the board;
(10) In the case of a physical therapist, employed a physical
therapy assistant who is not a licensed physical therapy
assistant; or employed or utilized a licensed physical therapy
assistant or physical therapy aide without complying with the
provisions of this article or the rules of the board; or

(11) In the case of a physical therapy assistant, practiced
physical therapy other than in accordance with the definitional
requirements of a physical therapy assistant as specified in
subdivision (i), section two of this article.


(a) Whenever the board shall deny an application for any
original or renewal license or any application for a temporary
permit or shall suspend or revoke any license or temporary
permit it shall make and enter an order to that effect and serve
a copy thereof on the applicant or licensee, by certified mail,
return receipt requested. The order shall state the grounds for
the action taken. Before the board may take any disciplinary
action against a licensee, the licensee shall be provided with a
written statement of the charges against him or her and notice
of the right of the licensee to demand a hearing.

(b) Any applicant or licensee shall be entitled to a hearing
thereon (as to all issues not excluded from the definition of a
"contested case" as set forth in article one, chapter twenty-nine-
a of this code) if, within twenty days after receipt of a copy
thereof, he or she files with the board a written demand for a
hearing. The board may require the applicant or licensee to give
reasonable security for the costs thereof, and, if the applicant or
licensee does not substantially prevail at the hearing, costs shall
be assessed against him or her and may be collected by a civil
action or other proper remedy.

(c) Upon request of a hearing to be conducted in accordance
with this section, the board shall set a time and place within
thirty days thereafter. Any scheduled hearing may be continued
by the board upon its own motion or for good cause shown by
the applicant or licensee.
(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following the hearing, with like effect as if the provisions of said article were set forth in this subsection.

(e) Any hearing shall be conducted by a quorum of the board or by a hearing examiner designated by the board. For the purpose of conducting any hearing any member of the board or its designee shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(f) At any hearing the applicant or licensee may represent himself or herself or be represented by an attorney at law admitted to practice before any circuit court of this state. Upon request by the board, it shall be represented at any hearing by the attorney general or his or her assistants.

(g) After any hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board 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 the decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the applicant or licensee and his or her attorney of record, if any.

(h) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section twelve of this article.

§30-20-15. Termination date.

The West Virginia board of physical therapy shall terminate on the first day of July, two thousand one, pursuant to the provisions of article ten, chapter four of this code.
CHAPTER 216

(H. B. 2672 — By Mr. Speaker, Mr. Kiss, and Delegates Compton, Leach, Douglas, Mezzatesta, Staton and Martin)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and six, article twenty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to exempting certified densitometry technologists from obtaining radiologic technologist licenses; and eliminating obsolete “grandfather” provisions for licensure.

Be it enacted by the Legislature of West Virginia:

That sections three and six, article twenty-three, chapter thirty 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. RADIOLOGIC TECHNOLOGISTS.

§30-23-3. License required.

§30-23-6. Qualifications of applicants; exceptions; applications; fee.

§30-23-3. License required.

1 (a) No person may engage in, offer to engage in, or hold himself or herself out to the public as being engaged in, the practice of radiologic technology in this state, nor may any person use in connection with any trade, business, profession or occupation, except in those instances specifically provided in subdivisions (1), (2), (3), (4) and (5), subsection (c), section six of this article, the word radiologic technologist or any other title, word or abbreviation which induces or tends to induce the belief that such person is qualified to engage or is engaged in the practice of radiologic technology, unless and until the person first obtains a license or temporary permit to engage in the practice of radiologic technology in accordance with the provisions of this article, which license or temporary permit
remains unexpired, unsuspended and unrevoked: *Provided*,
That no such license or temporary permit may be required for
a radiologic technologist who is not a resident of this state, who
is the holder of a license or certificate to engage in the practice
of radiologic technology issued by a state with licensing or
certification requirements determined by the board to be at least
equal to those provided in this article, who has no regular place
of practice in this state and who engages in the practice of
radiologic technology in this state for a period of not more than
ten days in any calendar year.

(b) No firm, association or corporation may, except through
a licensee or licensees, render any service or engage in any
activity which if rendered or engaged in by any individual
would constitute the practice of radiologic technology.

§30-23-6. Qualifications of applicants; exceptions; applications;
fee.

(a) To be eligible for a license to practice radiologic
technology the applicant must:

(1) Be of good moral character;

(2) Have completed four years of high school education or
its equivalent;

(3) Have successfully completed a minimum twenty-four-
month course in radiologic study in a school of radiologic
technology approved by the board;

(4) Have passed the examination prescribed by the board,
which examination shall cover the basic subject matter of
radiologic technology, skills and techniques; and

(5) Not have been convicted of a felony in any court in this
state or any federal court in this or any other state within ten
years preceding the date of application for registration, which
conviction remains unreversed; and not have been convicted of
a felony in any court in this state or any federal court in this or
any other state at any time if the offense for which the applicant
was convicted related to the practice of radiologic technology,
which conviction remains unreversed.
(b) Any person who holds a license or certificate, including the American registry of radiologic technologists, to practice radiologic technology issued by any other state, the requirements for which license or certificate are found by the board to be at least equal to those provided in this article, shall be eligible for a license to practice radiologic technology in this state without examination.

(c) The following persons are not required to obtain a license in accordance with the provisions of this article:

(1) A technology student enrolled in or attending an approved school of technology who as part of his or her course of study applies ionizing radiation to a human being under the supervision of a licensed practitioner;

(2) A person acting as a dental assistant who under the supervision of a licensed dentist operates only radiographic dental equipment for the sole purpose of dental radiography;

(3) A person engaged in performing the duties of a technologist in the person's employment by an agency, bureau or division of the government of the United States;

(4) Any licensed practitioner, radiologist or radiology resident; and

(5) Any person who demonstrates to the board that as of the first day of July, one thousand nine hundred ninety-nine, he or she:

(A) Has engaged in the practice of radiologic technology for the limited purpose of performing bone densitometry in this state for five or more years;

(B) Practices under the supervision of a licensed practitioner; and

(C) Has received a densitometry technologist degree certified by the international society for clinical densitometry.

(d) Any applicant for any such license shall submit an application therefor at such time (subject to the time limitation set forth in subsection (d) of this section), in such manner, on
such forms and containing such information as the board may from time to time by reasonable rule and regulation prescribe, and pay to the board a license fee of thirty dollars, which fee shall be returned to the applicant if the license application is denied.

CHAPTER 217

(Com. Sub. for H. B. 2726 — By Delegates Staton, Leach; Compton, Douglas, Hatfield, Beane and L. White)

[Passed March 1, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, eight, twelve and fifteen, article thirty-four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to changing the definitions used with regard to respiratory therapists to bring the code into compliance with the references used by the national board of respiratory care.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-1. License required to practice.

§30-34-2. Definitions.


§30-34-12. Professional identification.


§30-34-1. License required to practice.

In order to protect the life, health and safety of the public, any person practicing or offering to practice as a licensed, certified or registered respiratory therapist is required to submit evidence that he or she is qualified to practice, and is licensed
as provided in this article. It is unlawful for any person not licensed under the provisions of this article to practice as a respiratory therapist in this state, to deliver any portion of the description of services or scope of practice, or to use any title, sign, card or device to indicate that he or she is a respiratory therapist. The provisions of this article are not intended to limit, preclude or otherwise interfere with the practice of other health care providers including those health care providers working in any setting and licensed by appropriate agencies or boards of the state of West Virginia whose practices and training may include elements of the same nature as the practice of a licensed, certified or registered respiratory therapist.

§30-34-2. Definitions.

(a) "Board" means the West Virginia board for respiratory care;

(b) "Formal training" means a supervised, structured educational activity that includes preclinical didactic and laboratory activities and clinical activities. The training must be approved by an accrediting agency recognized by the board. It shall include an evaluation of competence through standardized testing mechanisms that the board determines to be both valid and reliable;

(c) "Graduate respiratory care therapist" means an individual who has graduated from a respiratory therapist educational program and is scheduled to take the next available examination administered by the state or a national organization approved by the board;

(d) "Practice of respiratory care" means the practice of respiratory care, and any part of respiratory care, by persons licensed under the provisions of this article and is limited to that which has been learned through formal or special training including performance evaluation to evaluate competence. The practice of respiratory care may be performed in any clinic, hospital, skilled nursing facility, private dwelling or other place considered appropriate or necessary by the board in accordance with the prescription or verbal orders of a licensed physician or other legally authorized person with prescriptive authority, or
under the direction of a qualified medical director. Practice of respiratory care includes, but is not limited to:

(1) The administration of pharmacological, diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician;

(2) Transcription and implementation of written or verbal orders of a physician or other legally authorized person with prescriptive authority, pertaining to the practice of respiratory care;

(3) Observing and monitoring signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics;

(4) Based on observed abnormalities, appropriate reporting, referral or implementation of respiratory care protocols or changes in treatment pursuant to the written or verbal orders of a person with prescriptive authority under the laws of the state of West Virginia; or

(5) The initiation of emergency procedures under the rules of the board or as otherwise permitted in this article;

(e) "Qualified medical director" means the medical director of any inpatient or outpatient respiratory care service, department or home care agency. The medical director shall be a licensed physician who is knowledgeable in the diagnosis and treatment of respiratory problems. This physician shall be responsible for the quality, safety and appropriateness of the respiratory services provided and require that respiratory care be ordered by a physician, or other legally authorized person with prescriptive authority, who has medical responsibility for the patient. The medical director shall be readily accessible to the respiratory care practitioners and assure their competency;

(f) "Respiratory care" means the allied health profession responsible for the direct and indirect services in the treatment,
management, diagnostic testing and care of patients with
deficiencies and abnormalities associated with the cardio-
pulmonary system, under a qualified medical director. Respira-
tory care includes inhalation therapy and respiratory therapy;

(g) "Respiratory care education program" means a course
of study leading to eligibility for licensure, registry or certifica-
tion in respiratory care and the program is approved by the
board;

(h) "Respiratory therapist" means an individual who has
successfully completed an accredited training program, and
who has successfully completed a certification or registry
examination for respiratory therapists administered by the state
or a national organization approved by the board and who is
licensed by the board as a licensed respiratory therapist;

(i) "Student respiratory care therapist" means an individual
enrolled in a respiratory educational program and whose
sponsoring educational institution assumes responsibility for
the supervision of, and the services rendered by, the student
respiratory care practitioner while he or she is functioning in a
clinical training capacity.


(a) Upon payment of the proper fees, an applicant for a
license to practice respiratory care shall submit to the board
written evidence, verified by oath, that the applicant:

(1) Has completed an approved respiratory care educational
program; and

(2) Passed a certification or registration examination,
except where otherwise provided in this article. This examina-
tion may be administered by the state or by a national agency
approved by the board. The board shall set the passing score for
the examination.

(b) The board may also issue a license to practice respira-
tory care by endorsement to an applicant who is currently
licensed to practice respiratory care under the laws of another
state, territory or country if the qualifications of the applicant
are considered by the board to be equivalent to, or greater than, 
those required in this state.

(c) The board may also issue a license to practice respira-
tory care by endorsement to respiratory therapists holding 
credentials conferred by the National Board for Respiratory 
Care, Inc., or its successor organizations, if the credentials have 
not been suspended or revoked. Applicants applying under the 
conditions of this section shall be required to certify under oath 
that their credentials have not been suspended or revoked.

(d) If an applicant fails to complete the requirements for 
licensure within ninety days from the date of filing, the applica-
tion is considered to be abandoned.

§30-34-12. Professional identification.

(a) A person holding a license to practice respiratory care 
as a respiratory therapist in this state who has successfully 
completed the entry level examination of the national board of 
respiratory care or any successor organization may use the title 
"licensed respiratory therapist certified" and the abbreviation 
"LRTC."

(b) A person holding a license to practice as a respiratory 
therapist in this state who has successfully completed the 
registry examination of the national board of respiratory care or 
any successor organization may use the title "licensed respira-
tory therapist registered" and the abbreviation "LRTR."

(c) The board may change the professional identification 
for its profession should the accepted reference to the providers 
of respiratory care be changed by the national board of respira-
tory care or its successor organization.

(d) A licensee shall either show his or her license or provide 
a copy thereof within twenty-four hours of a request from an 
employer or the board.


(a) A person may not practice respiratory care or represent 
himself or herself to be a respiratory care practitioner unless he
or she is licensed under this article except as otherwise provided by this article.

(b) This article does not prohibit:

(1) The practice of respiratory care which is an integral part of the program of study by students enrolled in respiratory care education programs accredited by organizations approved by the board. Students enrolled in respiratory care education programs shall be identified as "student RCP" and may only provide respiratory care under clinical supervision;

(2) Self-care by a patient, or gratuitous care by a friend or family member who does not represent or hold himself or herself out to be a respiratory care practitioner;

(3) Respiratory care services rendered in the course of an emergency;

(4) Persons in the military services or working in federal facilities providing respiratory care services when functioning in the course of their assigned duties; or

(5) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formalized or specialized training approved by the board.

(c) Nothing in this article is intended to limit, preclude or otherwise interfere with the practices of other persons and health care providers licensed by appropriate agencies of the state.

(d) Nothing in this article prohibits home medical equipment dealers from delivering and instructing persons in the operation of home medical respiratory equipment, or from receiving requests for changes in equipment and settings from physicians or other authorized individuals.

(e) An individual who passes an examination or successfully completes training that includes content in one or more of the functions included in this article is not prohibited from performing those procedures for which he or she was tested, so long as the testing body offering the examination or training is approved by the board.
AN ACT to amend and reenact section six, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia prosecuting attorneys institute generally; increasing the salary of the executive director of the West Virginia prosecuting attorneys institute; and permitting the deposit of moneys from grants, reimbursements or other funding sources into the West Virginia prosecuting attorneys institute fund.

Be it enacted by the Legislature of West Virginia:

That section six, article four, chapter 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. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-6. West Virginia prosecuting attorneys institute.

(a) There is hereby created the West Virginia prosecuting attorneys institute, a public body whose membership shall consist of the fifty-five elected county prosecuting attorneys in the state. The institute shall meet at least once each calendar year and the presence of twenty-eight of the fifty-five prosecutors at any meeting constitutes a quorum for the conduct of the institute’s business.

(b) There is hereby created the executive council of the West Virginia prosecuting attorneys institute which shall consist of five prosecuting attorneys elected by the membership of the West Virginia prosecuting attorneys institute at its annual meeting and two persons appointed annually by the county
commissioner's association of West Virginia. The executive
council shall elect one member of the council to serve as
chairman of the institute for a term of one year without com-
penation. The executive council shall serve as the regular
executive body of the institute.

(c) There is hereby created the position of executive
director of the West Virginia prosecuting attorneys institute to
be employed by the executive council of the institute. The
executive director of the West Virginia prosecuting attorneys
institute shall serve at the will and pleasure of the executive
council of the institute at an annual salary of fifty thousand
dollars per year: Beginning the first day of July, one thousand
nine hundred ninety-nine, the executive director shall receive an
annual salary of fifty-five thousand dollars. The executive
director shall be licensed to practice law in the state of West
Virginia and shall devote full time to his or her official duties
and may not engage in the private practice of law.

(d) The duties and responsibilities of the institute, as
implemented by and through its executive council and its
executive director, shall include the following:

(1) To provide for special prosecuting attorneys to pursue
a criminal matter in any county upon the request of a circuit
court judge of that county and upon the approval of the execu-
tive council;

(2) To establish and to implement general and specialized
training programs for prosecuting attorneys and their profes-
sional staffs;

(3) To provide materials for prosecuting attorneys and their
professional staffs, including legal research, technical assis-
tance and technical and professional publications;

(4) To compile and disseminate information on behalf of
prosecuting attorneys and their professional staffs on current
developments and changes in the law and the administration of
criminal justice;

(5) To establish and to implement uniform reporting
procedures for prosecuting attorneys and their professional
staffs in order to maintain and to provide accurate and timely data and information relative to criminal prosecutorial matters;

(6) To accept and expend funds, grants and gifts and accept services from any public or private source;

(7) To enter into agreements and contracts with public or private agencies or educational institutions;

(8) To identify experts and other resources for use by prosecutors in criminal matters;

(9) To make recommendations to the Legislature or the supreme court of appeals of the state of West Virginia on measures required, or procedural rules to be promulgated, to make uniform the processing of juvenile cases in the fifty-five counties of the state; and

(10) To develop a written handbook for prosecutors and their assistants to use which delineates relevant information concerning the elements of various crimes in West Virginia and other information as the institute deems appropriate.

(e) Each prosecuting attorney is subject to appointment by the institute to serve as a special prosecuting attorney in any county where the prosecutor for that county or his or her office has been disqualified from participating in a particular criminal case. The circuit judge of any county of this state, who disqualifies the prosecutor or his or her office from participating in a particular criminal case in that county, shall seek the appointment by the institute of a special prosecuting attorney to substitute for the disqualified prosecutor. The executive director of the institute shall, upon written request to the institute by any circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and upon approval of the executive council, appoint a prosecuting attorney to serve as a special prosecuting attorney. The special prosecuting attorney appointed shall serve without any further compensation other than that paid to him or her by his or her county, except that he or she is entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage and room and board from the county to which he or she is appointed as a prosecutor.
The county commission in which county he or she is special prosecutor is responsible for all expenses associated with the prosecution of the criminal action.

(f) The executive director of the institute shall maintain an appointment list that shall include the names of all fifty-five prosecuting attorneys and that shall also include the names of any assistant prosecuting attorney who wishes to serve as a special prosecuting attorney upon the same terms and conditions as set forth in this section. The executive director of the institute, with the approval of the executive council, shall appoint special prosecuting attorneys from the appointment list for any particular matter giving due consideration to the proximity of the proposed special prosecuting attorney’s home county to the county requesting a special prosecutor and giving due consideration to the expertise of the special prosecuting attorney.

(g) Commencing on the first day of July, one thousand nine hundred ninety-six, each county commission shall pay, on a monthly basis, a special prosecution premium to the treasurer of the state for the funding of the West Virginia prosecuting attorneys institute. The monthly premiums shall be paid according to the following schedule:

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<tr>
<th>Category</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Premium</th>
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<tbody>
<tr>
<td>A</td>
<td>$1,500,000,000</td>
<td>Unlimited</td>
<td>$400</td>
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<tr>
<td>B</td>
<td>$1,000,000,000</td>
<td>$1,499,999,000</td>
<td>$375</td>
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<td>C</td>
<td>$ 800,000,000</td>
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<td>D</td>
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<td>$ 600,000,000</td>
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Upon receipt of a premium, grant, reimbursement or other funding source, excluding federal funds as provided in article two, chapter four of this code, the treasurer shall deposit the funds into a special revenue fund to be known as the “West Virginia prosecuting attorneys institute fund”. All costs of operating the West Virginia prosecuting attorneys institute shall be paid from the West Virginia prosecuting attorneys institute fund upon proper authorization by the executive council or by the executive director of the institute and subject to annual appropriation by the Legislature of the amounts contained within the fund.

(h) The West Virginia prosecuting attorneys institute shall continue to exist until the first day of July, two thousand one, unless continued by an act of the Legislature. The institute shall annually by the first day of the regular legislative session provide the joint committee on government and finance with a report setting forth the activities of the institute and suggestions for legislative action.

(i) Neither the institute nor its employees acting in their employment capacity shall engage in activities before governmental bodies which advocate positions on issues other than those issues consistent with the duties of the institute set forth in subsection (d) of this section.

**CHAPTER 219**

*(S. B. 643 — By Senator Kessler)*

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing greater discretion to the West Virginia prosecuting attorneys institute in the processing of forensic medical examinations and the payment of costs from the forensic medical examination fund.
Be it enacted by the Legislature of West Virginia:

That section sixteen, article eight-b, 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 8B. SEXUAL OFFENSES.

§61-8B-16. Payment for costs of forensic medical examination.

(a) When any person alleges that he or she has been the victim of an offense proscribed by this article, the West Virginia prosecuting attorneys institute shall pay to a licensed medical facility from the forensic medical examination fund the cost of the forensic medical examination for this person on the following conditions and in the following manner:

1. The payment shall cover all reasonable, customary and usual costs of the forensic medical examination;

2. The costs of additional nonforensic procedures performed by the licensed medical facility, including, but not limited to, prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases, may not be paid from the fund;

3. The forensic medical examination must have been conducted within a reasonable time of the alleged violation;

4. The licensed medical facility must apply for payment of the costs of a forensic medical examination from the fund within a reasonable time of the examination;

5. The licensed medical facility shall submit a statement of charges to the prosecuting attorney in the county in which the alleged offense occurred and the prosecuting attorney shall certify, if proper, that the forensic medical examination was conducted as a part of a criminal investigation; and

6. The prosecuting attorney shall, within sixty days of receipt of a statement of charges from the licensed medical facility, forward the statement of charges and the certification to the West Virginia prosecuting attorneys institute for payment from the fund and for the reimbursement of the institute from
the fund for the reasonable costs of processing and recording the payment.

(b) No licensed medical facility may collect the costs of a forensic medical examination from the victim of an alleged violation of this article if the reasonable, customary and usual costs of the forensic medical examination qualifies for payment from the forensic medical examination fund as set forth in subsection (a) of this section.

CHAPTER 220

(S. B. 702 — Originating in the Committee on Finance)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five, nine, twelve and twenty-four, article sixteen, chapter five 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 twelve-a and twelve-b, all relating to the West Virginia public employees insurance act; defining terms; increasing the membership of the finance board; providing for appointment of the new members; revising requirements regarding preparation of annual financial plans and long-range plans; realigning duties of the finance board and the actuary; changing time of submission for revenue estimates; requiring submission of prospective financial plan; removing requirement that types and levels of costs to employers, employees and retired employees in effect remain in effect; providing criminal penalties for knowingly obtaining benefits, payments or anything of value to which the person is not entitled or greater than those to which the person is entitled; upon a finding of probable cause, authorizing the director to refer alleged violations fraud and abuse to the insurance commissioner for investigation and, where appropriate, prosecution; providing penalties for violations not otherwise specifically provided; authorizing the director to negotiate and
contract directly with health care providers; providing immunity for reporting fraudulent activities; and requiring that the retirees last employer be a participating employer to be eligible for public employees insurance agency programs upon retirement.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, nine, twelve and twenty-four, article sixteen, chapter five 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 twelve-a and twelve-b, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

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

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

§5-16-12. Misrepresentation by employer, employee or provider; penalty.

§5-16-12a. Inspections; violations and penalties.

§5-16-12b. Privileges and immunity.

§5-16-24. Rules for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

§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) "Agency" means the public employees insurance agency created by this article.

(2) "Director" means the director of the public employees insurance agency created by this article.
(3) "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;
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(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.

(4) "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.

(5) "Finance board" means the public employees insurance agency finance board created by this article.

(6) "Person" means any individual, company, association, organization, corporation or other legal entity, including, but not limited to, hospital, medical, or dental service corporations; health maintenance organizations or similar organization providing prepaid health benefits; or individuals entitled to benefits under the provisions of this article.

(7) "Plan" means the medical indemnity plan or a managed care plan option offered by the agency.
“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, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer: 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.

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

(a) There is hereby continued the public employees insurance agency finance board, which consists of the director and six members appointed by the governor with the advice and consent of the Senate for terms of four years and until the appointment of their successors: Provided, That of the two members added to the board by the amendment of this section, enacted during the regular legislative session, one thousand nine hundred ninety-nine, the at-large member shall be appointed for an initial term of two years and the member representing organized labor shall be appointed for a term of four years. Members may be reappointed for successive terms. No more than four members (including the director) may be of the same political party.

(b) Of the six members appointed by the governor, one member shall represent the interests of education employees, one shall represent the interests of public employees, one shall
represent the interests of organized labor and three shall be
selected from the public at large. The governor shall appoint the
member representing the interests of education employees from
a list of three names submitted by the largest organization of
education employees in this state. The governor shall appoint
the member representing the interests of organized labor from
a list of three names submitted by the state’s largest organiza-
tion representing labor affiliates. The three members appointed
from the public shall each have experience in the financing,
development or management of employee benefit programs. All
new appointments made after the first day of July, one thousand
nine hundred ninety-four, shall be selected to represent the
different geographical areas within the state and all members
shall be residents of West Virginia. No member may be
removed from office by the governor except for official
misconduct, incompetence, neglect of duty, neglect of fiduciary
duty or other specific responsibility imposed by this article, or
gross immorality.

(c) The director shall serve as chairperson of the finance
board, which shall meet at times and places specified by the call
of the director or upon the written request to the director of at
least two members. Notice of each meeting shall be given in
writing to each member by the director at least three days in
advance of the meeting. Four members constitutes a quorum.
The board shall pay each member the same compensation and
expense reimbursement as is paid to members of the Legislature
for their interim duties, as recommended by the citizens
legislative compensation commission and authorized by law for
each day or portion of a day engaged in the discharge of official
duties.

(d) Pursuant to the provisions of article ten, chapter four of
this code, the finance board shall terminate on the first day of
July, two thousand one, unless extended by legislation enacted
before the termination date.

(e) Upon termination of the board and notwithstanding any
provisions in this article to the contrary, the director is autho-
rized to assess monthly employee premium contributions and
to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code; any employee assessments or costs previously authorized by the finance board shall then remain in effect until amended by rule of the director promulgated pursuant to this subsection.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

(a) The purpose of the finance board created by this article is to bring fiscal stability to the public employees insurance agency through development of annual financial plans and long-range plans designed to meet the agency’s estimated total financial requirements, taking into account all revenues projected to be made available to the agency, and apportioning necessary costs equitably among participating employers, employees and retired employees and providers of health care services.

(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the public employees insurance agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the finance board or the director. All reasonable fees and expenses for actuarial services shall be paid by the public employees insurance agency. Any financial plan or modifications to a financial plan approved or proposed by the finance board pursuant to this section shall be submitted to and reviewed by the actuary, and may not be finally approved and submitted to the governor and to the Legislature without the actuary’s written professional opinion that the plan may be
reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, including incurred but unreported claims, for the fiscal year for which the plan is proposed. The actuary's opinion on the financial plan for each fiscal year shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. The actuary's opinion for any fiscal year shall not include a requirement for establishment of a reserve fund.

(c) All financial plans required by this section shall establish:

(1) Maximum levels of reimbursement which the public employees insurance agency makes to categories of health care providers;

(2) Any necessary cost containment measures for implementation by the director;

(3) The levels of premium costs to participating employers; and

(4) The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds' ability to pay. The finance board may establish different levels of costs to retired employees based upon length of employment with a participating employer, ability to pay, or other relevant factors. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The finance board may develop policies which encourage the use of West Virginia health care providers.

In addition, the finance board may allocate a portion of the premium costs charged to participating employers to subsidize the cost of coverage for participating retired employees, on such terms as the finance board determines are equitable and financially responsible.

(d) (1) The finance board shall prepare an annual financial plan for each fiscal year during which the finance board
remains in existence. The finance board chairman shall request
the actuary to estimate the total financial requirements of the
public employees insurance agency for the fiscal year.

(2) The finance board shall prepare a proposed financial
plan designed to generate revenues sufficient to meet all
estimated program and administrative costs of the public
employees insurance agency for the fiscal year. The proposed
financial plan shall allow for no more than thirty days of
accounts payable to be carried over into the next fiscal year.
Before final adoption of the proposed financial plan, the finance
board shall request the actuary to review the plan and to render
a written professional opinion stating whether the plan will
generate sufficient revenues to meet all estimated program and
administrative costs of the public employees insurance agency
for the fiscal year. The actuary’s report shall explain the basis
of its opinion. If the actuary concludes that the proposed
financial plan will not generate sufficient revenues to meet all
anticipated costs, then the finance board shall make necessary
modifications to the proposed plan to ensure that all actuarially-
determined financial requirements of the agency will be met.

(3) Upon obtaining the actuary’s opinion, the finance board
shall conduct one or more public hearings in each congressional
district to receive public comment on the proposed financial
plan, shall review such comments, and shall finalize and
approve the financial plan.

(4) Any financial plan shall be designed to allow thirty days
or less of accounts payable to be carried over into the next fiscal
year. For each fiscal year, the governor shall provide his or her
estimate of total revenues to the finance board no later than the
fifteenth day of October of the preceding fiscal year: Provided,
That for the prospective financial plans required by this section,
the governor shall estimate the revenues available for each
fiscal year of the plans, based on the estimated percentage of
growth in general fund revenues. The finance board shall
submit its final, approved financial plan, after obtaining the
necessary actuary’s opinion and conducting one or more public
hearings in each congressional district, to the governor and to
the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the director on the first day of July of the fiscal year. In addition to each final, approved financial plan required under this section, the finance board shall also simultaneously submit financial statements based on generally accepted accounting practices (GAAP) and the final, approved plan restated on an accrual basis of accounting, which shall include allowances for incurred but not reported claims: Provided, however, That the financial statements and the accrual-based financial plan restatement shall not affect the approved financial plan.

(e) The provisions of chapter twenty-nine-a of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section.

(f) Beginning on the first day of January, two thousand, and every year thereafter, the finance board shall submit to the governor and the Legislature, a prospective financial plan, for a period not to exceed five years, for the programs provided for in this article. Factors that the board shall consider include, but shall not be limited to, the trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of services; and, state specific information such as average age of employee population, active to retiree ratios, the service delivery system and health status of the population.

(g) The prospective financial plans shall be based on the estimated revenues submitted in accordance with subdivision (4), subsection (d) of this section, and shall include an average of the projected cost-sharing percentages of premiums and an average of the projected deductibles and co-pays for the various programs. After the submission of the initial prospective plan, the board may not increase costs to the participating employers or change the average of the premiums, deductibles and co-pays for employees, except in the event of a true emergency as provided for in this section: Provided, That if the board invokes the emergency provisions, the cost shall be borne between the employers and employees in proportion to the cost-sharing ratio for that plan year: Provided, however, That for purposes of this
section, "emergency" means that the most recent projections demonstrate that plan expenses will exceed plan revenues by more than one percent in any plan year.

(h) The finance board shall meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the public employees insurance agency. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures, and any other factors affecting the fiscal stability of the plan, and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The financial board may not increase the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

(i) For any fiscal year in which legislative appropriations differ from the governor's estimate of general and special revenues available to the agency, the finance board shall, within thirty days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

(a) The director is hereby given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article and to provide the plan or plans of group hospital and surgical insurance coverage, group major medical insurance coverage, group prescription drug insurance coverage and group life and accidental death insurance coverage selected in accordance with the provisions of this article, such contract or contracts to be executed with one or more agencies, corporations, insurance companies or service organizations licensed to sell group hospital and surgical insurance,
group major medical insurance, group prescription drug
insurance and group life and accidental death insurance in this
state.

(b) The group hospital or surgical insurance coverage and
group major medical insurance coverage herein provided for
shall include coverages and benefits for X-ray and laboratory
services in connection with mammogram and pap smears when
performed for cancer screening or diagnostic services and
annual checkups for prostate cancer in men age fifty and over.
Such benefits shall include, but not be limited to, the following:

(1) Baseline or other recommended mammograms for
women age thirty-five to thirty-nine, inclusive;

(2) Mammograms recommended or required for women age
forty to forty-nine, inclusive, every two years or as needed;

(3) A mammogram every year for women age fifty and
over;

(4) A pap smear annually or more frequently based on the
woman’s physician’s recommendation for women age eighteen
and over; and

(5) A checkup for prostate cancer annually for men age fifty
or over.

(c) The group life and accidental death insurance herein
provided for shall be in the amount of ten thousand dollars for
every employee. The amount of the group life and accidental
death insurance to which an employee would otherwise be
entitled shall be reduced to five thousand dollars upon such
employee attaining age sixty-five.

(d) All of the insurance coverage to be provided for under
this article may be included in one or more similar contracts
issued by the same or different carriers.

(e) The provisions of article three, chapter five-a of this
code, relating to the division of purchases of the department of
finance and administration, shall not apply to any contracts for
any insurance coverage or professional services authorized to
be executed under the provisions of this article. Before entering
into any contract for any insurance coverage, as authorized in
this article, the director shall invite competent bids from all
qualified and licensed insurance companies or carriers, who
may wish to offer plans for the insurance coverage desired:
Provided, That the director shall negotiate and contract directly
with health care providers and other entities, organizations and
vendors in order to secure competitive premiums, prices and
other financial advantages. The director shall deal directly with
insurers or health care providers and other entities, organiza-
tions and vendors in presenting specifications and receiving
quotations for bid purposes. No commission or finder’s fee, or
any combination thereof, shall be paid to any individual or
agent; but this shall not preclude an underwriting insurance
company or companies, at their own expense, from appointing
a licensed resident agent, within this state, to service the
companies’ contracts awarded under the provisions of this
article. Commissions reasonably related to actual service
rendered for the agent or agents may be paid by the underwrit-
ing company or companies: Provided, however, That in no
event shall payment be made to any agent or agents when no
actual services are rendered or performed. The director shall
award the contract or contracts on a competitive basis. In
awarding the contract or contracts the director shall take into
account the experience of the offering agency, corporation,
insurance company or service organization in the group hospital
and surgical insurance field, group major medical insurance
field, group prescription drug field and group life and accidental
death insurance field, and its facilities for the handling of
claims. In evaluating these factors, the director may employ the
services of impartial, professional insurance analysts or
actuaries or both. Any contract executed by the director with a
selected carrier shall be a contract to govern all eligible
employees subject to the provisions of this article. Nothing
contained in this article shall prohibit any insurance carrier
from soliciting employees covered hereunder to purchase
additional hospital and surgical, major medical or life and
accidental death insurance coverage.
(f) The director may authorize the carrier with whom a primary contract is executed to reinsure portions of the contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

(g) Each employee who is covered under any contract or contracts shall receive a statement of benefits to which the employee, his or her spouse and his or her dependents are entitled under the contract, setting forth the information as to whom the benefits are payable, to whom claims shall be submitted, and a summary of the provisions of the contract or contracts as they affect the employee, his or her spouse and his or her dependents.

(h) The director may at the end of any contract period discontinue any contract or contracts it has executed with any carrier and replace the same with a contract or contracts with any other carrier or carriers meeting the requirements of this article.

(i) The director shall provide by contract or contracts entered into under the provisions of this article the cost for coverage of children’s immunization services from birth through age sixteen years to provide immunization against the following illnesses: Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b, haemophilus influenzae-b and whooping cough. Additional immunizations may be required by the commissioner of the bureau of public health for public health purposes. Any contract entered into to cover these services shall require that all costs associated with immunization, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration, be exempt from any deductible, per visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible and/or copayment provisions.

§5-16-12. Misrepresentation by employer, employee or provider; penalty.
(a) Any person who knowingly secures or attempts to secure benefits payable under this article or anything of value to which the person is not entitled, or who knowingly secures or attempts to secure greater benefits than those to which the person is entitled, by willfully misrepresenting the presence or extent of benefits to which the person is entitled under a collateral insurance source, or by willfully misrepresenting any material fact relating to any other information requested by the director or by willfully overcharging for services provided, or by willfully misrepresenting the diagnosis or nature of the service provided, may be found to be overpaid and shall be civilly liable for any overpayment. In addition to the civil remedy provided herein, the director shall withhold payment of any benefits or other payment due to that person until any overpayment has been recovered or may directly set off, after holding internal administrative proceedings to assure due process, any such overcharges or improperly derived payment against benefits or other payment due such person hereunder. Nothing in this section shall be construed to limit any other remedy or civil or criminal penalty provided by law.

(b) Any person who knowingly secures or attempts to secure benefits payable under this article or any other thing of value to which the person is not entitled, or knowingly attempts to secure greater benefits than those to which the person is entitled, by willfully misrepresenting, or aiding in the misrepresentation of, any material fact relating to employment, diagnosis or services rendered is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars, imprisoned for not longer than two years, or both. Errors in coding for purposes of billing shall not be presumed to be evidence of criminal conduct in the absence of other competent evidence to the contrary.

§5-16-12a. Inspections; violations and penalties.

(a) Upon a determination of the director or his or her designated representative that there is probable cause to believe that fraud, abuse or other illegal activities involving transactions with the agency has occurred, the director or his or her
designated representative is authorized to refer the alleged violations to the insurance commissioner for investigation and, if appropriate, prosecution, pursuant to article forty-one, chapter thirty-three of this code. For purposes of this section, "transactions with the agency" includes, but is not limited to, application by any insured or dependent, any employer, or any type of health care provider for payment to be made to that person or any third party by the agency.

(b) Any person who violates any provision of this article for which no other penalty is specifically provided is guilty of a misdemeanor and, upon conviction thereof, is subject to a fine of not less than one hundred dollars but not more than five hundred dollars, or imprisonment for a period of not less than twenty-four hours but not more than fifteen days, or both.

§5-16-12b. Privileges and immunity.

(a) Any person who makes a report or furnishes information, written or oral, concerning suspected, anticipated or fraudulent activity to secure benefits payable under this article, or to secure greater benefits than those to which the person or provider is entitled, is entitled to those privileges and immunities existing under common or statutory law, as well as the immunity established in this section.

(b) In the absence of fraud, malice or bad faith, no person or agent, employee or designee of that person shall be subject to civil liability of any nature arising out of that person’s provision of information related to suspected, anticipated or fraudulent activity in the securing of benefits payable or securing greater benefits than those to which the person or provider is entitled.

(c) Nothing in this section shall be construed to limit, abrogate or modify existing statutes or case law applicable to the duties or liabilities of persons acting in a manner that is itself fraudulent, with malice or in bad faith.

§5-16-24. Rules for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical
leave of absence entitled to coverage; life insurance.

The director shall promulgate any necessary rules for the effective administration of the provisions of this article. Except as specifically provided in subsection (e), section four of this article, all rules of the public employees insurance agency and all hearings held by the public employees insurance agency are exempt from the provisions of chapter twenty-nine-a of this code. Any rules promulgated by the public employees insurance board or director shall remain in full force and effect until they are amended or replaced by the director.

The rules shall provide that any employee of the state who has been compelled or required by law to retire before reaching the age of sixty-five years is eligible to participate in the public employees’ health insurance program at the premium contribution established by the finance board after any extended coverage to which he or she, his or her spouse and dependents may be entitled by virtue of his or her accrued annual leave or sick leave, pursuant to the provisions of section thirteen of this article, has expired. Any employee who voluntarily retires, as provided by law, is eligible to participate in the public employees’ health insurance program at the premium contribution established by the finance board after any extended coverage to which he or she, his or her spouse and dependents may be entitled by virtue of his or her accrued annual leave or sick leave, pursuant to the provisions of section thirteen of this article, has expired: Provided, That the employee’s last employer is a participating employer. The dependents of any deceased retired employee are entitled to continue their participation and coverage upon payment of the premium contribution established by the finance board. In establishing the cost of health insurance coverage for retired employees and their spouses and dependents, the finance board, in its discretion, may cause the claims experience of the retired employees and their spouses and dependents to be rated separately from that of active employees and their spouses and dependents, or may cause the claims experience of retired and active employees, and their spouses and dependents, to be rated together.
Any employee who is on a medical leave of absence, approved by his or her employer, is subject to the following provisions of this paragraph, is entitled to continue his or her coverage until he or she returns to his or her employment, and the employee and employer shall continue to pay their proportionate share of premium costs as provided by this article:

Provided, That the employer is obligated to pay its proportionate share of the premium cost only for a period of one year:

Provided, however, That during the period of the leave of absence, the employee shall, at least once each month, submit to the employer the statement of a qualified physician certifying that the employee is unable to return to work.

Any retiree is eligible to participate in the public employees' life insurance program, including the optional life insurance coverage as already available to active employees under this article, at his or her own expense for the cost of coverage, based upon actuarial experience; and the director shall prepare, by rule, for that participation and coverages under declining term insurance and optional additional coverage for the retirees.

CHAPTER 221

(H. B. 3032 — By Delegates Campbell, Komlinar, Jenkins, Kelley, Pettit, Facemyer and Border)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That article two, chapter five-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 fourteen-a, to read as follows:

ARTICLE 2. FINANCE DIVISION.

§5A-2-14a. Reserves for the public employees insurance programs.

(a) There is hereby created a special revenue account in the state treasury, designated the "Public Employees Insurance Reserve Fund", which shall be an interest bearing account and may be invested in accordance with the provisions of article six, chapter twelve of this code, with the interest income a proper credit to the fund.

(b) The fund shall consist of moneys appropriated by the Legislature and moneys transferred annually pursuant to the provisions of subsection (c) of this section. These moneys shall be held in reserve and appropriated by the Legislature only for the support of the programs provided by the public employees insurance agency.

(c) Beginning on the thirty-first day of May, two thousand, and annually thereafter, each state agency except for the higher education central office created in article four, chapter eighteen-b; the higher education governing boards as defined in articles two and three, chapter eighteen-b; and the state institutions of higher education as defined in section two, article one, chapter eighteen-b all of this code shall transfer one percent of its annualized expenditures from state funds, excluding federal funds based on filled full time equivalents as determined by the state budget office as of the first day of April for that fiscal year, to the public employees insurance reserve fund. The secretary may exempt that transfer only upon a showing by the requesting agency that the continued operation of that agency is dependent upon receipt of the exemption: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-nine, the higher education central office created in article four, chapter eighteen-b of this code; the
higher education governing boards as defined in articles two and three, chapter eighteen-b of this code; and the state institutions of higher education as defined in section two, article one, chapter eighteen-b of this code are exempt from the provisions of this subsection.

(d) On the first day of January, two thousand one, and annually thereafter, the secretary shall provide a report to the governor and the Legislature on the amount of reserves established pursuant to the provisions of this section, the number of exemptions granted and the agencies receiving those exemptions.

CHAPTER 222

(S. B. 516 — By Senators Plymale, Jackson, Edgell and Sprouse)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public employees retirement system; and specifying that interest on certain funds shall be credited on a calendar year basis instead of a fiscal year basis.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-41. Allowance of regular interest on balances in funds.

1 The board of trustees shall, at the end of each calendar year, allow and credit regular interest on the balance at the beginning of that calendar year in each member's individual account in the members deposit fund and on the mean balances in the employers accumulation fund and the retirement reserve fund. The interest so allowed and credited shall be charged to the income fund.
CHAPTER 223

(Com. Sub. for S. B. 137 — By Senators Tomblin, Mr. President and Sprouse)
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-a and one-b, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said chapter by adding thereto a new article, designated article three-a; and to amend and reenact section twelve-b, article eight, chapter thirty-one-a, all relating to receipting and disbursing of funds from the state treasury; authorizing information regarding uncashed state checks to only be disclosed to the state agency or payee; clarifying procedures for electronic warrants and direct deposits; facilitating electronic commerce involving state agencies; stating legislative purpose of financial electronic commerce for state agencies; providing definitions; requiring state auditor and state treasurer to implement electronic commerce capabilities to facilitate performance of their duties; requiring auditor and treasurer to competitively bid necessary banking, investment and related services for their offices; ensuring records and authentications of the auditor and treasurer are not denied legal effect solely on ground they are in electronic form; requiring heads of spending units to be responsible for security procedures when using electronic commerce; authorizing auditor to establish a state debit card known as the West Virginia check card for recipients of payroll or of benefits or entitlement programs without bank accounts; authorizing treasurer to contract with banking and other institutions to establish point of sale terminals for acceptance of the “West Virginia Check Card” and electronic benefit funds cards issued by state spending units and ensuring the state does not use the equipment to compete with private sector providers or for profit; authorizing the treasurer to establish a system for acceptance of credit cards and other
payment methods for electronic commerce purchases and requiring spending units to utilize the treasurer’s system; establishing a special revenue account for receipt of fees related to the POS transactions; ensuring that cash withdrawals for these programs in excess of fifty dollars is not banking; and limiting fees for use of a West Virginia check card or an electronic benefits transfer card to the higher of one dollar or one percent of the amount of cash withdrawn.

Be it enacted by the Legislature of West Virginia:

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

Chapter
31A. Banks and Banking.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article
3. Appropriations, Expenditures and Deductions.
3A. Financial Electronic Commerce.

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

*§12-3-1. Manner of payment from treasury; form of checks.

1 Every person claiming to receive money from the treasury of the state shall apply to the auditor for a warrant for same.
2 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

* Clerk’s Note: This section was also amended by SB 428 (Chapter 286), which passed prior to this act.
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. 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." Any information or records maintained by the treasurer concerning any check which has not been presented for payment within six months of the date of issuance may only be disclosed to the state agency specified on the check, or to the payee, his or her personal representative, next of kin or attorney-at-law and is otherwise confidential and exempt from disclosure under the provisions of article one, chapter twenty-nine-b of this code. 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 authorization of the method of payment. The auditor shall prescribe the form of the authorization. If the authorization is in written form, it shall be sent to the auditor for review and approval and then forwarded in electronic form to the treasurer. If the authorization is in electronic form, it shall be sent to both the auditor and the treasurer. The auditor must review and approve the authorization. This section shall not be construed to require the auditor to utilize the method of payment authorized by this section. An authorization furnished pursuant to this section may be revoked by written notice furnished to the auditor and then forwarded by the auditor in electronic form to the treasurer or by electronic notice furnished to both the auditor and the treasurer. Upon execution of the authorization and its receipt by the office of the auditor, the warrant shall be created in the manner specified on the authorization and forwarded to the treasurer for further disposition to the designated bank or other financial institution specified on the electronic warrant: 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: Provided further, That the treasurer and the auditor may contract with any bank or financial institution for the processing of electronic authorizations.

§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 the direct deposit of his or her net wages to his or her account in any bank or other financial institution by electronic funds transfer. Direct deposit authorizations shall comply with
the requirements of section one-a of this article. Upon approval
of an authorization, the auditor shall issue the warrant in the
manner specified on the authorization and forward the warrant
to the treasurer for further disposition 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 employ-
ees’ account at any bank or financial institution designated by
the employee via electronic funds transfer or, if the employee
does not have a bank account, through the West Virginia check
card program in accordance with section four, article three-a of
this chapter.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-1. Legislative purpose and findings.
§12-3A-4. Payment by the West Virginia Check Card.
§12-3A-5. Limited establishment and use of point of sale terminals, etc., for special
purposes and circumstances relating to certain public assistance
payments.
§12-3A-6. Receipting of electronic commerce purchases.

§12-3A-1. Legislative purpose and findings.

The Legislature finds that state government should facilitate
and promote electronic commerce, particularly in the electronic
receipting and disbursing of state funds. As many individuals
receiving recurring state funds do not have bank accounts for
the purpose of receiving direct deposits, and as the state desires
that all payments be made electronically by the year two
thousand two, it is the intent of the Legislature to provide a
mechanism for all payees to receive payments by electronic
funds transfers through direct deposit or through state issued
debit cards. Further, as usage of electronic commerce grows,
state spending units need the ability to accept payments
electronically. To meet these goals, the Legislature seeks to
ensure proper management oversight and accountability are maintained.


(a) "Electronic" means electrical, digital, magnetic, wireless, optical, electromagnetic, biometric, or any other technology that is similar to these technologies.

(b) "Electronic commerce" means using electronic techniques for accomplishing business transactions, including electronic mail or messaging, electronic bulletin board, internet technology, electronic funds transfers, electronic data interchange (EDI) techniques, and any other related electronic technologies.

(c) "Security procedure" means a methodology or procedure for the purpose of:

(1) Preventing access by unauthorized parties;

(2) Verifying that an electronic record or electronic signature is that of a specific party or created by a specific electronic point of origin; or

(3) Detecting error or alteration in the communication, content, or storage of an electronic record since a specific point in time.

(d) "WEB commerce" means electronic commerce on the internet.


The state auditor and the treasurer shall implement electronic commerce capabilities for each of their offices to facilitate the performance of their duties under this code. The state auditor and the state treasurer shall competitively bid the selection of vendors needed to provide the necessary banking, investment and related services for their offices, and the provisions of article one-b, chapter five, and articles three and seven, chapter five-a of this code shall not apply, unless requested by the state auditor or state treasurer.
A record or an authentication used by the auditor or the treasurer may not be denied legal effect solely on the ground that it is in electronic form.

The head of each spending unit is responsible for adopting and implementing security procedures to ensure adequate integrity, security, confidentiality, and auditability of the business transactions of his or her spending unit when utilizing electronic commerce.

§12-3A-4. Payment by the West Virginia Check Card.

The state auditor may establish a state debit card known as the "West Virginia Check Card" for recipients of employee payroll or of benefits or entitlement programs processed by the auditor who are considered unbanked and who do not possess a federally insured depository institution account. The state auditor shall use every reasonable effort to make a federally insured depository account available to a recipient, and to encourage all recipients to obtain a federally insured depository account. Prior to issuing the West Virginia check card, the state auditor shall first make a determination that a recipient has shown good cause that an alternative method to direct deposit is necessary. The state auditor and the state treasurer shall jointly issue a request for proposals in accordance with section three of this article to aid the auditor in the administration of the program and to aid the treasurer in the establishment of state owned bank accounts and accommodate accessible locations for use of the West Virginia check card. In carrying out the purposes of this article, the state auditor and state treasurer shall not compete with banks or other federally insured financial institutions, or for profit.

§12-3A-5. Limited establishment and use of point of sale terminals, etc., for special purposes and circumstances relating to certain public assistance payments.

(a) The state treasurer shall have authority to contract with banking institutions and other entities to establish point of sale terminals ("POS terminals"), as defined in section twelve-b, article eight, chapter thirty-one-a of this code, that accept the
West Virginia check card and the cards issued by state spending
units to recipients of state or federal funds, food or other
benefits. If other entities decline to provide the POS terminals
in a manner that meets the requirements of this section, the
treasurer is authorized to establish, own and operate POS
terminals. The treasurer may place the POS terminals and
associated equipment at any location within this state where he
or she or the department of health and human resources
determines the equipment is needed to provide reasonable
access to users of the cards. The POS terminals authorized
pursuant to this section may be used to provide any amount of
cash payment or allowable purchase of retail items or other
benefits as determined by the state treasurer, pursuant to state
law and rules and, where necessary, in cooperation with any
appropriate federal agencies.

(b) POS terminals established pursuant to this section may
be jointly owned and operated with private sector financial
institutions and may be established for the sole purpose of
providing access to electronically transmitted government
benefits or payments. However, if the state treasurer establishes
POS terminals, they shall be made available for use by the
general public and the retailer shall reimburse the state for each
transaction as per an agreement entered into at the time the POS
terminals are established.

(c) Any retailer, agency or other person providing cash
withdrawal services for state administered electronic cards from
its own funds through POS terminals established pursuant to
this section are limited to charging a fee for the service in the
amount of the higher of one dollar or one percent of the amount
of cash withdrawn.

(d) There is hereby created in the state treasury a separate
special revenue account, which shall be an interest bearing
account, to be known as the "Point of Sale Terminals Collection
Account". The account shall contain any funds received from
transactions on POS terminals installed by the state treasurer
and any other funds authorized by the Legislature. Moneys in
the account shall be used by the treasurer to pay the fees and
costs associated with the POS terminals and related equipment, and for such other purposes as determined by the Legislature.

(e) In carrying out the purposes of this article, the treasurer shall not compete with private sector providers of POS terminals, banks or other financial institutions, or for profit. If a private sector provider, bank or other financial institution certifies to the treasurer that it can provide POS terminals to meet the requirements contained within this article, the treasurer shall not establish or maintain equipment in the locations identified in the certification. Nothing in this article shall authorize the treasurer to establish or operate automatic teller machines.

§12-3A-6. Receipting of electronic commerce purchases.

The treasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Each spending unit utilizing WEB commerce, electronic commerce or other method that offers products or services for sale shall utilize the treasurer’s system for acceptance of payments.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§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 transac-
tions 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 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 or her 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: Provided, however, That cash withdrawals through a point of sale terminal in excess of fifty dollars shall not constitute engaging in the business of banking if the sales transaction is made with the use of a West Virginia check card, as provided in article three-a, chapter twelve of this code, or with an electronic benefits transfer or other card issued by state spending units to transmit payments of food benefits, temporary
assistance to needy families, or other assistance, benefit or
entitlement programs mandated or offered by federal or state
government: Provided further, That any retailer, agency or
person providing cash withdrawals with a West Virginia check
card or an electronic benefits transfer card through a POS
terminal is limited to charging a fee for the services in the
amount of the higher of one dollar or one percent of the amount
of cash withdrawn.

(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, maintain-
ing, 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 opera-
tion of customer bank communication terminals, including,
without limitation, the procedure for the sharing thereof.

CHAPTER 224

(Com. Sub. for H. B. 2453 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]
AN ACT to repeal articles eighteen and eighteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one, chapter twenty-four of said code; and to amend said code by adding thereto a new chapter, designated chapter twenty-four-d, all relating to the public service commission; continuing the public service commission; delegating to the public service commission the responsibilities formerly held by the West Virginia cable television advisory board and the regulation of cable television thereby; repealing and substantially enacting the provisions of the cable television systems act and tenant's right to cable service act; requiring cable franchises; establishing duties of the public service commission; describing the application process; establishing standards for cable service; establishing penalties; restricting franchise transfer; requiring rate filings; establishing certain requirements for operation; establishing a complaint process; giving the public service commission the authority to establish rules and regulations; preserving the current method of taxation; establishing tenants rights to cable service; establishing a right of entry by a cable operator; requiring a notice of installation of cable service by a cable operator; and establishing procedures for determining just compensation for a landlord.

Be it enacted by the Legislature of West Virginia:

That articles eighteen and eighteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed; that section three, article one, chapter twenty-four of said code be amended and reenacted; and that said code is amended by adding thereto a new chapter, designated chapter twenty-four-d, all to read as follows:

Chapter
24D. Cable Television.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

*§24-1-3. Commission continued; membership; chairman; compensation.

* Clerk's Note: This section was also amended by SB 359 (Chapter 258), which passed prior to this act.
(a) The public service commission of West Virginia, heretofore established, is continued and directed as provided by this chapter, chapter twenty-four-a, chapter twenty-four-b and chapter twenty-four-d of this code. After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the public service commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section five, article ten, chapter four of this code, the public service commission shall continue to exist until the first day of July, two thousand one. The public service commission may sue and be sued by that name. The public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, with not less than ten years’ actual work experience in the legal profession as a member of a state bar. No more than two of the commissioners shall be members of the same political party. Each commissioner 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 this state. The oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor’s will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of subsection (c) of this section.

(b) The unexpired terms of members of the public service commission at the time this subsection becomes effective are continued. Upon expiration of the terms, appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.
(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter, or holding any stocks or bonds of a public utility subject to the provisions of this chapter, or who is pecuniarily interested in a public utility subject to the provisions of this chapter, may serve as a member of the commission or as an employee of the commission. Nor may any commissioner be a candidate for or hold public office, or be a member of any political committee, while acting as a commissioner; nor may any commissioner or employee of the commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him or her from office and shall appoint a new commissioner to fill the vacancy created.

(d) The salaries of members of the public service commission and the manner in which they are paid established by the prior enactment of this section are continued. Effective the first day of July, one thousand nine hundred ninety-six, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive an annual salary of sixty-five thousand dollars to be paid in monthly installments from the special funds in the amounts that follow:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, fifty-two thousand dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, ten thousand eight hundred fifty dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, two thousand one hundred fifty dollars.
In addition to this salary provided for all commissioners, the chairman of the commission shall receive five thousand dollars per annum to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter on and after the first day of July, one thousand nine hundred ninety-six.

CHAPTER 24D. CABLE TELEVISION.

Article
2. Tenants' Rights to Cable Services.

ARTICLE 1. CABLE TELEVISION SYSTEMS ACT.

§24D-1-1. Legislative findings.
§24D-1-3. Cable franchise required; franchising authority.
§24D-1-4. Existing cable franchises.
§24D-1-5. Duties of the public service commission.
§24D-1-6. Application or proposal for cable franchise; fee; certain requirements.
§24D-1-7. Cable franchise application or proposal procedure; public hearing; notice.
§24D-1-8. Issuance of cable franchise authority; criteria; content.
§24D-1-10. Revocation, alteration, or suspension of cable franchise; penalties.
§24D-1-12. Transfer of cable franchise.
§24D-1-13. Rates; filing with public service commission; approval.
§24D-1-14. Requirement for adequate service; terms and conditions of service.
§24D-1-16. Credit or refund for interrupted service.
§24D-1-17. Office operating requirements; office hours.
§24D-1-22. Complaints; violations; penalties.
§24D-1-23. Other duties of commission; suit to enforce chapter.
§24D-1-25. Annual fees; effect of application and filing fees on franchise fees.

§24D-1-1. Legislative findings.
The Legislature finds that television is an important source of information and entertainment affecting the welfare and economy of the state, and that cable television services have become widespread, often providing the only access to quality television signals in many areas of the state. The Legislature finds that it is in the public interest to establish uniform standards within the state of West Virginia for the issuance, renewal and transfer of cable television franchises; to establish uniform standards for the provision of cable service; to establish uniform procedures for the investigation and resolution of complaints concerning cable service; and to establish just, reasonable and nondiscriminatory rates and charges for the provision of cable service to the extent that the service is not subject to effective competition. The purpose of the article is to promote such goals by all available means not in conflict with federal law, rules or regulations.


As used in this chapter:

(1) "Applicant" means a person who initiates an application or proposal.

(2) "Application" means an unsolicited filing for a cable franchise.

(3) "Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

(4) "Cable franchise" or "franchise" means a nonexclusive initial authorization or renewal thereof issued pursuant to this chapter, whether the authorization is designated as a franchise, permit, order, contract, agreement or otherwise, which authorizes the construction or operation of a cable system.

(5) "Cable operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in the cable system or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.
(6) "Cable service" means (A) the one-way transmission to subscribers of video programming or other programming service and (B) subscriber interaction, if any, which is required for the selection of video programming or other programming service.

(7) "Cable system" means any facility within this state consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but does not include: (A) A facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless that facility or facilities uses any public right-of-way; or (C) a facility of a public utility subject, in whole or in part, to the provisions of chapter twenty-four of this code, except to the extent that those facilities provide video programming directly to subscribers.

(8) "Commission" or "Public Service Commission" means the public service commission of West Virginia.

(9) "County commission" means the commissioners composing the county commission in pursuance of section nine, article IX of the constitution of this state within whose jurisdiction there exists a cable system or where such cable system is hereafter constructed, operated, acquired or extended.

(10) "Facility" includes all real property, antennas, poles, supporting structures, wires, cables, conduits, amplifiers, instruments, appliances, fixtures and other personal property used by a cable operator in providing service to its subscribers.

(11) "Franchising authority" means a municipality, a county commission or the public service commission empowered by federal, state or local law to grant a cable franchise.

(12) "Institution of higher education" means an academic college or university accredited by the north central association of colleges and schools.
(13) "Municipality" means any municipal corporation duly chartered in the state of West Virginia within whose jurisdiction there exists a cable system or where such cable system is hereafter constructed, operated, acquired or extended.

(14) "Other programming service" means information that a cable operator makes available to all subscribers generally.

(15) "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental agency.

(16) "Proposal" means a filing solicited by the franchising authority for a cable franchise.

(17) "Public, educational or governmental access facilities" means (A) channel capacity designated for public, educational or governmental uses and (B) facilities and equipment for the use of that channel capacity.

(18) "Public place" includes any property, building, structure or water to which the public has a right of access and use.

(19) "School" means an academic and noncollege type regular or special education institution of learning established and maintained by the department of education and the arts or licensed and supervised by that department.

(20) "Service area" means that geographic area for which a cable operator has been issued a cable franchise.

(21) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

§24D-1-3. Cable franchise required; franchising authority.

(a) No person may construct, operate or acquire a cable system, or extend an existing cable system outside its designated service area, without first obtaining a cable franchise from a franchising authority as provided in this chapter.

(b) Any person operating a cable system on the effective
date of this chapter without a franchise shall, within sixty days of the effective date of this chapter, notify the commission in writing setting forth: (1) The name, business address and telephone number of the cable operator; (2) the principals and ultimate beneficial owners of the cable system or systems; (3) the geographic location and service area of any cable system operated by such person; (4) the number of subscribers within the cable system or systems; and (5) if applicable, the date on which and the franchising authority with which, a formal application for a franchise was filed.

(c) The commission shall, upon receipt of such information, determine the appropriate franchising authority or authorities for the purposes of the consideration of the issuance of a franchise to such cable operator or operators and shall notify the appropriate franchising authority or authorities and any such cable system operator of the franchise application procedures to be followed by the respective parties. Any such cable operator, that has not previously applied for a franchise with the appropriate franchising authority, shall, within sixty days of receipt of such notice from the commission, make formal application to the appropriate franchising authority or authorities for a franchise in accordance with the provisions of this article.

(d) The franchising authority shall be the municipality in which a cable system is to be constructed, operated, acquired or extended, or if there be no such municipality or if the municipality so elects not to act as a franchising authority, then the franchising authority shall be the county commission of the county in which such cable system is to be constructed, operated, acquired or extended: Provided, That nothing herein shall prohibit any county commission of a county in which a municipality acting as a franchising authority is located from also acting as a franchising authority for any cable system to be constructed, operated, acquired or extended within the jurisdiction of such county commission, nor prohibit any county commission of a county acquiring the franchise authority from a municipality from electing to transfer such authority to the commission.
(e) If a county commission elects not to act as the franchise authority, the commission shall become the franchising authority. A county commission acting as a franchising authority for unincorporated areas of the county may elect separately to transfer to the commission any franchise authority acquired from a municipality. If any municipality or county commission so elects not to be the franchising authority, the mayor or president of the county commission shall certify such delegation in writing to the commission. Such election shall be promptly made upon written request of the commission or the cable operator.

§24D-1-4. Existing cable franchises.

(a) The provisions of any cable franchise in effect on the effective date of this chapter shall remain in effect, subject to the express provisions of this article, and for no longer than the then current remaining term of the franchise as such franchise existed on the effective date.

(b) For purposes of subsection (a) of this section and other provisions of this article, a cable franchise shall be considered in effect on the effective date of this article if such franchise was granted on or before such effective date.

§24D-1-5. Duties of the public service commission.

In addition to its other duties, the public service commission shall:

(a) To the extent permitted by, and not contrary to applicable federal law, rules and regulations:

(1) Prescribe standards for procedures and practices which franchising authorities shall follow in considering the issuance of cable franchises, which standards shall provide for the forms of applications and proposals, the filing of all franchise applications, proposals and related documents as public records, with reasonable notice to the public that such records are open to inspection and examination during reasonable business hours; the holding of a public hearing, upon reasonable notice to the public, at which the applications or proposals shall be examined
and members of the public and interested parties are afforded a reasonable opportunity to express their views thereon; the rendition of a written report by the franchising authority made to the public, setting forth the reasons for its decision in awarding or not awarding the franchise; and such other procedural standards governing the issuance of cable franchises mandated by the provisions of this article or as the commission may otherwise deem necessary or appropriate to assure maximum public participation and competition and to protect the public interest;

(2) Prescribe minimum standards for inclusion in franchises, including maximum initial and renewal terms; minimum channel capacity; provisions regarding public, educational or governmental access facilities; a requirement that no such franchise may be exclusive; standards necessary or appropriate to protect the interests of viewers of free broadcast television and the public generally, which prohibit or limit cable operators from prohibiting or entering into agreements prohibiting the sale or other transfer of rights for the simultaneous or subsequent transmission over free broadcast television; and such other standards for inclusion in franchises as the commission shall deem necessary or appropriate to protect the public interest, including any provision regulating the rates for cable services to the extent that the same is not in conflict with federal law, rules or regulations;

(3) Prescribe standards by which a franchising authority shall determine whether an applicant possesses (i) the technical ability, (ii) the financial ability, (iii) the good character, and (iv) other qualifications necessary to operate a cable system in the public interest;

(4) Prescribe standards for the construction and operation of cable systems, which standards shall be designed to promote (i) safe, adequate and reliable service to subscribers, (ii) the construction and operation of systems consistent with the most advanced state of the art, (iii) a construction schedule providing for maximum penetration as rapidly as possible within the limitations of economic feasibility, (iv) the construction of
systems with the maximum practicable channel capacity, facilities for local program origination, facilities to provide service in areas conforming to various community interests, facilities with the technical capacity for interconnection with other systems within regions as established in the commission’s statewide plan and facilities capable of transmitting signals from subscribers to the cable system or to other points, and (v) the prompt handling of inquiries, complaints and requests for repairs;

(5) Prescribe such standards for the prohibition or limitation of concentration of control over mass media and communication companies and facilities and methods of enforcing such standards, as the commission may determine to be necessary or appropriate to protect the public interest: Provided, That nothing contained herein shall be construed to authorize the impairment of any existing rights of any mass media and communication company or any subsidiary thereof;

(b) Provide advice and technical assistance to other franchising authorities and community organizations in matters relating to cable franchises and services;

(c) Establish minimum specifications for equipment, service and safety of cable;

(d) Represent the interests of citizens of this state before the federal communications commission and make available information to the public on communications developments at the federal level;

(e) Stimulate and encourage cooperative arrangements among organizations, institutions, counties and municipalities in the development of public, educational or governmental access facilities;

(f) Maintain liaison with the communications industry and other parties, both public and private, having an interest therein, other states and political subdivisions of this state to promote the rapid and harmonious development of cable services as set forth in the legislative findings and intent of this article;
(g) Undertake such studies as may be necessary to meet the responsibilities and objectives of this article; and

(h) Implement the provisions of this article in a manner which is cognizant of the differing financial and administrative capabilities of cable systems of different sizes.

§24D-1-6. Application or proposal for cable franchise; fee; certain requirements.

(a) No cable franchise shall be issued except upon written application or proposal therefor to the franchising authority, accompanied by a fee of two hundred fifty dollars.

(b) An application for issuance of a cable franchise shall be made on a form prescribed by the commission. The application shall set forth the facts as required by the commission to determine whether a cable franchise should be issued, including facts as to:

(1) The citizenship and character of the applicant;

(2) The financial, technical and other qualifications of the applicant;

(3) The principals and ultimate beneficial owners of the applicant;

(4) The public interest to be served by the requested issuance of a cable franchise; and

(5) Any other matters deemed appropriate and necessary by the commission including the proposed plans and schedule of expenditures for or in support of the use of public, educational and governmental access facilities.

(c) A proposal for issuance of a cable franchise shall be accepted for filing only when made in response to the written request of the franchising authority for the submission of proposals.

§24D-1-7. Cable franchise application or proposal procedure; public hearing; notice.
An application or proposal for a cable franchise shall be processed as follows:

(1) After the application or proposal and required fee are received by the franchising authority within a time frame established by rule promulgated by the commission, the franchising authority shall notify an applicant in writing of the acceptance or nonacceptance for filing of an application or proposal for issuance of a cable franchise required by this chapter.

(2) After the issuance of a notice of acceptance for filing and within a time frame established by rule promulgated by the commission, the franchising authority shall hold a public hearing on the application or proposal to afford interested persons the opportunity to submit data, views or arguments, orally or in writing. If the franchising authority is the commission, notice thereof shall be given to the city council and mayor of any municipalities affected, the county commission of any counties affected and to any telephone or other utility and cable company in the county or counties in which the proposed service area is located, and a representative of the governing body of a municipality or county commission may appear at the public hearing to represent the interests of the public which will be served by the issuance of a cable franchise. The franchising authority shall also cause notice of the application and hearing to be published at least once in each of two successive weeks in a newspaper of general circulation in the county or counties in which the proposed service area is located. The last published notice shall appear at least fifteen days prior to the date of the hearing.

(3) After holding a public hearing, the franchising authority shall approve the application or proposal, in whole or in part, with or without conditions or modifications, or shall deny the application or proposal, with reasons for denial sent in writing to the applicant. Upon denial of the application or proposal, the applicant may appeal such denial to the circuit court of the county in which the franchise is to be located, which appeal shall be filed and considered in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.
(4) The provisions of this article supersede and replace all other state requirements regarding the issuance, notification and terms and conditions of a cable franchise.

§24D-1-8. Issuance of cable franchise authority; criteria; content.

(a) A franchising authority is exclusively empowered to issue a cable franchise to construct or operate facilities for a cable system upon the terms and conditions provided in this article.

(b) The franchising authority, after a public hearing as provided in this article, shall issue a cable franchise to the applicant when the franchising authority is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the franchising authority shall take into consideration, among other things, any objections arising from the public hearing, the content of the application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, and any other matters as the franchising authority considers appropriate in the circumstances.

(c) In determining the area which is to be serviced by the applicant, the franchising authority shall take into account the geography and topography of the proposed service area, and the present, planned and potential expansion in facilities or cable services of the applicant’s proposed cable system and any of the applicant’s existing cable systems.

(d) In issuing a cable franchise under this article, the franchising authority is not restricted to approving or disapproving the application or proposal, but may issue it for only partial exercise of the privilege sought or may attach to the exercise of the right granted by the cable franchise terms, limitations which the franchising authority considers the public interest may require. The cable franchise shall be nonexclusive,
shall include a description of the service area in which the cable
system is to be constructed, extended or operated and the
approximate date on which the service is to commence and
shall authorize the cable operator to provide service for a term
of fifteen years.

§24D-1-9. Cable system installation, construction, operation,
removal, general provisions.

(a) A cable franchise shall be construed to authorize the
construction or operation of a cable system (i) over public
rights-of-way, and (ii) through easements, which are within the
area to be served by the cable system and which have been
dedicated for compatible uses.

(b) The technical specifications, general routes of the
distribution system and the schedule for construction of the
cable system are subject to the approval of the franchising
authority.

(c) In installing, operating and maintaining facilities, the
cable operator shall avoid all unnecessary damage and injury to
any trees, structures and improvements in and along the routes
authorized by the franchising authority.

(d) The cable operator shall indemnify and hold the state,
county and municipality harmless at all times from any and all
claims for injury and damage to persons or property, both real
and personal, caused by the installation, operation or mainte-
nance of its cable system, notwithstanding any negligence on
the part of the state, county and/or municipality, their employ-
ees or agents. Upon receipt of notice in writing from the state,
county and/or municipality, the cable operator shall, at its own
expense, defend any action or proceeding against the state,
county and/or municipality in which it is claimed that personal
injury or property damage was caused by activities of the cable
operator in the installation, operation or maintenance of its
cable system.

(e) The cable operator shall provide a cable drop and basic
cable service at no cost to any school or institution of higher
education within its service area if service is actually being
delivered within a reasonable distance from the school or institution of higher education which may request service.

(f) The cable operator shall be required to designate at least ten percent but not more than three of all of its channels for public, educational or governmental use.

(g) Upon termination of the period of the cable permit or of any renewal thereof, by passage of time or otherwise, the cable operator shall remove its facilities from the highways and other public places in, on, over, under or along which they are installed if so ordered by the franchising authority and shall restore the areas to their original or other acceptable condition or otherwise dispose of its facilities. If removal is not completed within six months of the termination, any property not removed shall be deemed to have been abandoned and the cable operator shall be liable for the cost of its removal.

(h) The use of public highways and other public places shall be subject to:

(1) All applicable state statutes, municipal ordinances and all applicable rules and orders of the commission governing the construction, maintenance and removal of overhead and underground facilities of public utilities;

(2) For county highways, all applicable rules adopted by the governing body of the county in which the county highways are situated; and

(3) For state or federal-aid highways, all public welfare rules adopted by the secretary of the department of transportation.

(i) In the use of easements dedicated for compatible uses, the cable operator shall ensure:

(1) That the safety, functioning and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of facilities necessary for a cable system;
(2) That the cost of the installation, construction, operation or removal of facilities is borne by the cable operator or subscribers, or a combination of both; and

(3) That the owner of the property is justly compensated by the cable operator for any damages caused by the installation, construction, operation or removal of facilities by the cable operator.

(4) An "easement dedicated for compatible uses" is a public or private easement for electric, gas, telephone or other utility transmission.

§24D-1-10. Revocation, alteration, or suspension of cable franchise; penalties.

(a) Any cable franchise issued in accordance with the provisions of this chapter may be revoked, altered or suspended by the franchising authority upon the recommendation of the commission to a municipality or county acting as a franchising authority or after a hearing before the franchising authority, for the following reasons:

(1) For making material false or misleading statements in, or for material omissions from, any application or proposal or other filing made with the franchising authority;

(2) For repeated failure to maintain signal quality under the standards prescribed by the commission;

(3) For any sale, lease, assignment or other transfer of its cable franchise without consent of the franchising authority;

(4) Except when commercially impracticable, for unreasonable delay in construction or operation or for unreasonable withholding of the extension of cable service to any person in a service area;

(5) For material violation of the terms of its cable franchise;

(6) For failure to substantially comply with this chapter or any rules, regulations or orders prescribed by the commission;
(7) For substantial violation of its filed schedule of terms and conditions of service; and

(8) For engaging in any unfair or deceptive act or practice.

(b) In lieu of, or in addition to, the relief provided by subsection (a) hereof, the franchising authority may fine a cable operator, for each violation under the provisions of this section, in an amount not less than fifty dollars nor more than five thousand dollars for each violation. Each day’s continuance of a violation may be treated as a separate violation pursuant to rules and regulations adopted by the commission. Any penalty assessed under this section shall be in addition to any other costs, expenses or payments for which the cable operator is responsible under other provisions of this chapter.


(a) Any cable franchise issued pursuant to this chapter may be renewed by the franchising authority upon approval of a cable operator’s application or proposal therefor and in accordance with the provisions of 47 U.S.C. §546 as the same is in effect on the effective date of this chapter. The form of the application or proposal shall be prescribed by the commission. The application or proposal fee shall be the same fee prescribed for franchise applications. The periods of renewal shall be not less than five nor more than twenty years each. The commission shall require of the applicant full disclosure, including the proposed plans and schedule of expenditures for or in support of the use of public, educational or governmental access facilities. Except as otherwise provided in this section, the franchising authority shall have exclusive authority regarding the renewal of a cable franchise.

(b) For cable franchises for which a proposal or application for renewal has been submitted by the cable operator to the franchising authority prior to expiration of the cable franchise and which application or proposal the franchising authority has neither approved nor denied, the cable franchise, at the cable operator’s election, shall continue upon the same terms and conditions until such time as the franchising authority either approves or denies the application or proposal for renewal.
§24D-1-12. Transfer of cable franchise.

(a) No cable system and no cable franchise, including any system without a franchise and any franchise in existence on the effective date of this chapter, may be assigned, sold, or transferred, including a transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval of the appropriate franchising authority or authorities. For purposes of this section "transfer of control" means a transfer of the majority interest, either directly or indirectly, in the entity holding the cable franchise. The form of the application for transfer shall be prescribed by the commission.

(b) Notice provisions may be prescribed by the commission for encumbrances creating potential transfers.

(c) The procedure for consideration of any transfer under the provisions of this section shall conform, as nearly as possible, to the procedures prescribed in sections six and seven of this article for the consideration of issuing cable franchises, including the application fee therefor.

(d) Except as otherwise provided in this section, the franchising authority shall have exclusive authority regarding the approval of transfers of cable franchises.

§24D-1-13. Rates; filing with public service commission; approval.

(a) The commission shall require each cable operator to file a schedule of its rates of service on a form and with the notice that the commission may prescribe. The schedule shall be filed with the annual report referenced in section twenty-four of this article.

(b) To the extent permitted by federal law, the commission shall regulate rates to ensure that they are just and reasonable both to the public and to the cable operator and are not unduly discriminatory.

(c) To the extent permitted by federal law, the commission shall regulate charges other than those related to rates for the
provision of basic cable service to ensure that they are just and reasonable and not unduly discriminatory.

§24D-1-14. Requirement for adequate service; terms and conditions of service.

(a) Every cable operator shall provide safe, adequate and reliable service in accordance with applicable laws, rules, franchise requirements and its filed schedule of terms and conditions of service.

(b) The commission shall require each cable operator to submit a schedule of all terms and conditions of service in the form and with the notice that the commission may prescribe. The schedule shall be submitted with the annual report referenced in section twenty-four of this article.

(c) The commission shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area.


(a) Each cable operator, for the purpose of restoring interrupted service and improving substandard service, shall be able to receive calls twenty-four hours a day, seven days a week, and shall have one or more qualified persons as may be necessary to repair the cable system, facilities and equipment owned by the cable operator and located on a subscriber's premises, including, but not limited to, cable receiving equipment and directly associated equipment.

(b) Each cable operator shall restore interrupted service not later than twenty-four hours after being notified by a subscriber that service has been interrupted, unless (1) service cannot be restored until another company repairs facilities owned by such company and leased to, or required for the operation of, the cable service, (2) the interruption was caused by an act of
nature, or (3) the cable operator is unable to restore service within twenty-four hours due to extenuating circumstances. In the event of such extenuating circumstances, the company shall restore service as soon as feasible and then submit a written notice to the commission indicating that service has been restored and explaining the nature of the extenuating circumstances.

§24D-1-16. Credit or refund for interrupted service.

(a) If cable service to a subscriber is interrupted for more than twenty-four continuous hours, such subscriber shall, upon request, receive a credit or refund from the cable operator in an amount that represents the proportionate share of such service not received in a billing period, provided such interruption is not caused by the subscriber.

(b) The commission may promulgate rules establishing a viewing time reliability standard for cable operators and requiring such companies to file with the commission information on service interruptions not caused by subscribers.

§24D-1-17. Office operating requirements; office hours.

Each cable operator shall operate a business office in or near its area of operation as approved by the franchise authority or the commission that shall be open during normal business hours, and each cable operator shall operate sufficient telephone lines, including a toll-free number or any other free calling option, as approved by the commission, staffed by a company customer service representative during normal business hours.


(a) Annually, every cable operator shall mail to each of its subscribers a notice which:

(1) Informs subscribers how to communicate their views and complaints to the cable operator and to the commission;

(2) States the responsibility of the commission to receive and act on consumer complaints concerning matters other than channel selection, programming and rates; and
(3) States the policy regarding the method by which subscribers may request rebates or pro rata credit as described in section sixteen of this article.

(b) The notice shall be in nontechnical language, understandable by the general public, and in a convenient format. On or before the thirtieth day of January each year, the operator shall certify to the franchising authority and the commission that it has distributed the notice as provided in this section during the previous calendar year as required by this section.


(a) Every cable operator shall keep a record or log of all complaints received regarding quality of service, rates, programming, equipment malfunctions, billing procedure, employee relations with customers and similar matters as may be prescribed by the commission. The records shall be maintained for a period of two years.

(b) The record or log shall contain the following information for each complaint received:

(1) Date, time, nature of complaint;
(2) Name, address, telephone number of complainant;
(3) Investigation of complaint; and
(4) Manner and time of resolution of complaint.

(c) Consistent with the subscriber privacy provisions contained in 47 U.S.C. §551 as the same is in effect on the effective date of this chapter, every cable operator shall make the logs or records, or both, of such complaints available to any authorized agent of the commission and the franchising authority, upon request during normal business hours for on-site review.


(a) All cable operators holding an existing franchise on the effective date of this article shall file a copy of the franchise and any federal communications commission rulings or other
4 rulings affecting such franchises with the commission with the annual report filed in one thousand nine hundred ninety-nine as referenced in section twenty-four of this article.

(b) Within sixty days of the granting of an initial franchise, a renewal franchise or a transferred franchise, the franchisee shall file a copy of the franchise and any federal communications commission rulings or other rulings affecting such franchise with the commission and the franchising authority. The commission and franchising authority shall maintain a file of all franchise documents so recorded and make copies available upon request for the cost of reproduction and mailing, plus a reasonable administrative fee. The filing fee for initial, renewal or transfer franchise documents is fifty dollars per franchise, renewal or transfer of such franchise. In years in which the filing of initial, renewal or transfer franchise documents is not required, the franchisee shall pay a fee of twenty-five dollars for each franchise it holds.

(c) All such fees paid by any cable operator are franchise fees with the intent and meaning of 47 U.S.C. §542 as the same is in effect on the effective date of this chapter.


A cable television system operator may not deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex, physical handicap or country of natural origin.

§24D-1-22. Complaints; violations; penalties.

(a) Complaints of affected parties regarding the operation of a cable system must be made in writing and filed with the commission. The commission shall take up such complaints with the cable operator complained against in an endeavor to bring about satisfaction of the complaint without formal hearing. The commission shall not consider any complaint involving programming or any other issue that is preempted by federal law.

(b) The commission shall resolve all complaints, if possible informally. No form of informal complaint is prescribed, but
the writing must contain the essential elements of a complaint, including the name and address and the complainant, the correct name of the cable operator against which the complaint is made, a clear and concise statement of the facts involved and a request for affirmative relief.

(c) In the event that the commission cannot resolve the complaint to the satisfaction of all parties, the complainant may file a formal request to the commission and the complainant and cable operator shall be afforded all rights including the right of appeal as set forth in chapter twenty-four of this code.

(d) A cable operator may be subject to a fine or civil penalty in accordance with subsection (e) hereof, upon a determination by the commission or court that the cable operator has violated any of the following:

(1) The material terms of its cable franchise; or

(2) Substantial compliance with this article or rules or orders prescribed by the commission.

(e) The commission may fine or obtain civil penalties against a cable operator for each violation of subsection (d) of this section in an amount not less than one hundred dollars nor more than one thousand dollars for each violation. Any penalty assessed under this section is in addition to any other costs, expenses or payments for which the cable operator is responsible under other provisions of this section.

(f) In addition to fines and civil penalties, the commission may determine and declare and by order require for violation of subsection (d) of this section the cable operator to comply with the terms of its franchise or the requirements of this article or orders prescribed by the commission.

(g) No cable operator may raise rates or rescind and charge subscribers without providing to his or her subscribers sufficient advance written notice and opportunity to discontinue service.

§24D-1-23. Other duties of commission; suit to enforce chapter.
(a) The commission has the power and jurisdiction to supervise every cable operator within this state so far as may be necessary to carry out the purposes of this chapter and to do all things which are necessary or convenient in the exercise of this power and jurisdiction.

(b) The commission may adopt rules and regulations as are necessary to implement the provisions of this article. The rules and regulations promulgated by the cable advisory board pursuant to repealed article eighteen, chapter five, and in force and in effect on the thirty-first day of December, one thousand nine hundred ninety-seven, shall remain in effect and hereby become the rules and regulations of the commission.

(c) The commission or the commission's designated representatives may, from time to time, visit the places of business and other premises and examine the records and facilities of all cable operators to ascertain if all laws, rules, regulations and cable franchise provisions have been complied with, and may examine all officers, agents and employees of cable operators and all other persons, under oath, and compel the production of papers and the attendance of witnesses to obtain the information necessary for administering this article.

(d) The commission may appoint or contract for assistants and clerical, stenographic and other staff as may be necessary for the proper administration and enforcement of this article.

(e) The commission or other aggrieved party may institute, or intervene as a party in, any action in any court of law seeking a mandamus, or injunctive or other relief to compel compliance with this chapter, or any rule, regulation, or order adopted hereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection with this article.


Each cable operator shall file annually with the commission reports of its financial, technical and operational condition and its ownership. The reports shall be made in a form and on the time schedule prescribed by the commission and shall be kept on file open to the public.
§24D-1-25. Annual fees; effect of application and filing fees on franchise fees.
(a) Each cable operator shall pay to the commission an annual fee in an amount of twelve cents per subscriber. Such funds and all other funds to be paid to the commission under the provisions of this chapter shall be deposited into a special fund designated the "cable fund." Such fund shall be used for purposes of administering the provisions of this article. To the extent permitted by federal law, the commission may prohibit cable operators from assessing subscribers for any contribution toward the annual fee to be paid hereunder.

(b) Any filing fee required under the provisions of this chapter and the annual fee to be paid to the commission under the provisions of this section, together with any franchise fee paid to any franchising authority, may not exceed the maximum amount for any franchise fee as set forth in 47 U.S.C. §542 as the same is in effect on the effective date of this article.

(c) The commission shall not impose on or collect from any cable operator franchise fees when acting in the capacity as a franchising authority, other than fees set out in subsection(a) of this section and any filing fee required by this article.

No provision of this article may be construed to grant the commission the power to regulate the cable television industry as a utility.

Enactment of the amendments to section three, article one, chapter twenty-four of this code and this article in the year one thousand nine hundred ninety-nine shall in no way change how cable television providers, cable television property and cable television services are taxed by this state or its political subdivisions after the effective date of this enactment. For tax purposes, providers of cable television services who do not provide telephone services over the same system are not engaged in providing a public service and are neither a public
service business nor a public utility as those terms were used in
the tax laws of this state and its political subdivisions on the
thirty-first day of December, one thousand nine hundred ninety-
eight, and the cable television service furnished by them is not
a service subject to regulation by the public service commission
for purposes of exemption from tax under section eight, article
fifteen, chapter eleven of this code. This method of taxing
providers of cable television services, their property and
services shall remain in effect until affirmatively changed by
the Legislature.

ARTICLE 2. TENANTS' RIGHTS TO CABLE SERVICES.

§24D-2-1. Legislative findings.
§24D-2-6. Right of entry.

§24D-2-1. Legislative findings.

The Legislature finds and declares as follows:

(a) Cable television has become an important medium of
public communication and entertainment.

(b) It is in the public interest to assure apartment residents
and other tenants of leased residential dwellings access to cable
television service of a quality and cost comparable to service
available to residents living in personally owned dwellings.

(c) It is in the public interest to afford apartment residents
and other tenants of leased residential dwellings the opportunity
to obtain cable television service of their choice and to prevent
landlords from treating such residents and tenants as a captive
market for the sale of television reception services selected or
provided by the landlord.

As used in this article:

(a) "Cable operator" means any person or group of persons:
   (1) Who provides cable service over a cable system and directly
       or through one or more affiliates owns a significant interest in
       the cable system; or (2) who otherwise controls or is responsi-
       ble for, through any arrangement, the management and opera-
       tion of a cable system.

(b) "Cable service" or "cable television service" means: (1)
    The one-way transmission to subscribers of video programming
    or other programming service; and (2) subscriber interaction, if
    any, which is required for the selection of video programming
    or other programming service.

(c) "Cable system" means any facility within this state
    consisting of a set of closed transmission paths and associated
    signal generation, reception and control equipment that is
    designed to provide cable service which includes video pro-
    gramming and which is provided to multiple subscribers within
    a community, but does not include: (1) A facility that serves
    only to retransmit the television signals of one or more televi-
    sion broadcast stations; (2) a facility that serves only subscrib-
    ers in one or more multiple unit dwellings under common
    ownership, control or management, unless that facility or
    facilities uses any public right-of-way; or (3) a facility of a
    public utility subject, in whole or in part, to the provisions of
    chapter twenty-four of this code, except to the extent that those
    facilities provide video programming directly to subscribers.

(d) "Cable television facilities" includes all antennas, poles,
    supporting structures, wires, cables, conduits, amplifiers,
    instruments, appliances, fixtures and other personal property
    used by a cable operator in providing service to its subscribers.

(e) "Commission" or "Public Service Commission" shall
    mean the public service commission of West Virginia.

(f) "Landlord" means a person owning, controlling, leasing,
    operating or managing the multiple dwelling premises.
(g) "Multiple dwelling premises" means any area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be occupied or leased for occupation, or actually occupied, as individual homes or residences for three or more households. The term includes mobile home parks.

(h) "Person" means an individual, partnership, associate, joint stock company, trust, corporation or governmental agency.

(i) "Tenant" means a person occupying single or multiple dwelling premises owned or controlled by a landlord but does not include an inmate or any person incarcerated or housed within any state institution.


(a) A landlord may not:

(1) Interfere with the installation, maintenance, operation or removal of cable television facilities upon his property or multiple dwelling premises, except that a landlord may require:

(A) That the installation of cable television facilities conform to such reasonable conditions as are necessary to protect the safety, functioning and appearance of the multiple dwelling premises and the convenience and well-being of other tenants;

(B) That the cable operator or the tenant or a combination thereof bear the entire cost of the installation or removal of such facilities; and

(C) That the cable operator agrees to indemnify the landlord for any damage caused by the installation, operation or removal of such facilities;

(2) Demand or accept any payment from any tenant, in any form, in exchange for permitting cable television service on or within his property or multiple dwelling premises, or from any cable operator in exchange therefor except as may be determined to be just compensation in accordance with this article;
(3) Discriminate in rental charges, or otherwise, between
tenants who receive cable television service and those who do
not.

(b) Provisions relating to cable television service or satellite
master antenna systems contained in rental agreements and
leases executed prior to the effective date of this article may be
enforced notwithstanding this section.

(c) A cable operator may not enter into any agreement with
the owners, lessees or persons controlling or managing the
multiple dwelling premises served by a cable television, or do
or permit any act, that would have the effect, directly or
indirectly, of diminishing or interfering with existing rights of
any tenant or other occupant of such building to use or avail
himself of master or individual antenna equipment.

(d) The cable operator shall retain ownership of all wiring
and equipment used in any installation or upgrade of a cable
system within any multiple dwelling premises.


Except as provided in this article, no landlord may demand
or accept any payment from any cable operator in exchange for
permitting cable television service or facilities on or within the
landlord’s property or multiple dwelling premises.


Every landlord is entitled to a single payment of just
compensation for property taken by a cable operator for the
installation of cable television service or facilities. The amount
of just compensation, if not agreed between the landlord and
cable operator, shall be determined by the commission in
accordance with this article upon application by the landlord
pursuant to section eight of this article. A landlord is not
entitled to just compensation in the event of a rebuild, upgrade
or rewiring of cable television service or facilities by a cable
operator.

§24D-2-6. Right of entry.
A cable operator, upon receiving a request for service by a tenant or landlord, has the right to enter property of the landlord for the purpose of making surveys or other investigations preparatory to the installation. Before such entry, the cable operator shall serve notice upon the landlord and tenant, which notice shall contain the date of the entry, the name and address of the cable operator, the name and address of the landlord, from whom the request for service was received, and a citation to this act. The cable operator is liable to the landlord for any damages caused by such entry but such damages shall not duplicate damages paid by the cable operator pursuant to section eight of this article.


(a) Every cable operator proposing to install cable television service or facilities upon the property of a landlord shall serve upon said landlord and tenant, or an authorized agent, written notice of intent thereof at least fifteen days prior to the commencement of such installation. Verbal notice to the tenant shall be legally sufficient if the date and time of entry is communicated to the tenant by either the landlord or cable operator at least twenty-four hours prior to entry.

(b) The commission shall prescribe the procedure for service of such notice, and the form and content of such notice, which shall include, but need not be limited to:

(1) The name and address of the cable operator;

(2) The name and address of the landlord;

(3) The approximate date of the installation; and

(4) A citation to this act.

(c) Where the installation of cable service or facilities is not effected pursuant to a notice served in accordance with this section, for whatever reason including denial of entry by the landlord, the cable operator may file with the board a petition, verified by an authorized person from the cable operator, setting forth:
(1) Proof of service of a notice of intent to install cable television service upon the landlord;

(2) The specific location of the real property;

(3) The resident address of the landlord, if known;

(4) A description of the facilities and equipment to be installed upon the property, including the type and method of installation and the anticipated costs thereof;

(5) The name of the individual or officer responsible for the actual installation;

(6) A statement that the cable operator shall indemnify the landlord for any damage caused in connection with the installation, including proof of insurance or other evidence of ability to indemnify the landlord;

(7) A statement that the installation shall be conducted without prejudice to the rights of the landlord to just compensation in accordance with section eight of this article;

(8) A summary of efforts by the cable operator to effect entry of the property for the installation; and

(9) A statement that the landlord is afforded the opportunity to answer the petition within ten days from the receipt thereof, which answer must be responsive to the petition and may set forth any additional matter not contained in the petition.

If no answer is filed within the time permitted, the commission shall grant the petitioning cable operator an order of entry and installation, which order constitutes a ruling that the petitioning cable operator has complied with the requirements of this article. If the landlord files a written answer to the petition, the cable operator shall have ten days within which to reply to the answer. The commission may grant or deny the petition, schedule an administrative hearing on any factual issues presented thereby or direct such other procedures as may be consistent with the installation of cable television service or facilities in accordance with this article. The only basis upon which the commission may deny a petition by the cable
operator is that the cable operator has not complied with the
requirements of this article.

Within thirty days of the date of grant or denial of the
petition, or issuance of any other order by the commission
following a hearing or other procedure, the cable operator or
landlord may appeal such grant or denial or order of the
commission to the circuit court of Kanawha County. Any order
issued by the commission pursuant to this section may be
enforced by an action seeking injunctive or mandamus relief in
circuit court where the property is located.


(a) If the landlord and cable operator have not reached
agreement on the amount of just compensation, a landlord may
file with the commission an application for just compensation
within four months following the service by the cable operator
of the notice described in section eight of this article, or within
four months following the completion of the installation of the
cable television facilities, whichever is later.

(b) An application for just compensation shall set forth
specific facts relevant to the determination of just compensa-
tion. Such facts should include, but need not be limited to, a
showing of:

(1) The location and amount of space occupied by the
installation;

(2) The previous use of such space;

(3) The value of the applicant’s property before the
installation of cable television facilities and the value of the
applicant’s property subsequent to the installation of cable
television facilities; and

(4) The method or methods used to determine such values.

The commission may, upon good cause shown, permit the filing
of supplemental information at any time prior to final determi-
nation by the commission.
(c) A copy of the application filed by the landlord for just compensation shall be served upon the cable operator making the installation and upon either the mayor or county commission of the municipality or county, respectively, in which the real property is located when the municipality or county is the franchise authority.

(d) Responses to the application, if any, shall be served on all parties and on the commission within twenty days from the service of the application.

(e) (1) The commission shall within sixty days of the receipt of the application, make a preliminary finding of the amount of just compensation for the installation of cable television facilities.

(2) Either party may, within twenty days from the release date of the preliminary finding by the commission setting the amount of just compensation, file a written request for a hearing. Upon timely receipt of such request, the commission shall conduct a hearing on the issue of compensation.

(3) In determining just compensation, the commission may consider evidence introduced including, but not limited to, the following:

(A) Evidence that a landlord has a specific alternative use for the space occupied or to be occupied by cable television facilities, the loss of which will result in a monetary loss to the owner;

(B) Evidence that installation of cable facilities upon such multiple dwelling premises will otherwise substantially interfere with the use and occupancy of such premises to the extent which causes a decrease in the resale or rental value; or

(C) Evidence of increase in the value of the property occurring by reason of the installation of the cable television facilities.

(4) For purposes of this article, the commission shall presume that a landlord has received just compensation from a cable operator for the installation within a multiple dwelling
58 premises if the landlord receives compensation in the amount
59 of one dollar for each dwelling unit within the multiple dwell-
60 ing premises or one hundred dollars for the entire multiple
dwelling premises, whichever amount is more.

62 (5) If, after the filing of an application, the cable operator
63 and the applicant agree upon the amount of just compensation,
64 a hearing shall not be held on the issue.

65 (6) Within thirty days of the date of the notice of the
decision of the commission, either party may appeal the
decision of the commission in the circuit court of Kanawha
County regarding the amount awarded as compensation.


1 Cable services being provided to tenants on the effective
date of this article may not be prohibited or otherwise prevented
so long as the tenant continues to request such services.


1 Notwithstanding any provision in this article to the con-
2 trary, a landlord and cable operator may by mutual agreement
3 establish the terms and conditions upon which cable television
4 facilities are to be installed within a multiple dwelling premises
5 without having to comply with the provisions of this article.

CHAPTER 225

(H. B. 2251 — By Delegate Warner)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to scholarships for training division of highways personnel; providing for other training programs; increasing the number of scholarships and
amounts that may be awarded; eliminating the state treasurer from the process; and changing the credit received for service time with the division of highways.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-4b. Scholarships for training highway personnel; other training programs; notes for money advanced; payment or cancellation of notes.

The Legislature hereby declares that there is a wide and continuing need for trained personnel in the division of highways of this state and that the scholarships herein provided will aid the division of highways in attracting and holding competent employees.

The commissioner of highways is empowered to enter into contracts for training programs with state colleges, universities and other training sources and to award scholarships to competent persons, whether presently employed by the division of highways or not, for the purpose of enabling and encouraging such persons to attend a college or university to pursue the course of study as may be approved by the commissioner of highways, but the number of persons holding such scholarships at any one time shall not exceed fifteen. Each scholarship shall carry a stipend in an amount fixed by the commissioner of highways not in excess of twelve thousand dollars in the aggregate. The necessary expenditures for the scholarships shall be made from the funds available to the division of highways. The recipient of a scholarship shall execute notes and shall deliver said notes to the commissioner of highways. Each note shall be in the amount of the sum received from the state road fund and shall be payable on demand to the division of highways. The commissioner of highways shall hold said notes and if, for any reason, except death or physical or mental disability, or being drafted into the armed services, the recipient of a
26 scholarship fails successfully to complete the course of study
27 for which the scholarship was granted or if after the completion
28 of the prescribed course of study does not continue or become
29 an employee of the division of highways, or ceases to be an
30 employee before all the notes have been paid or canceled, the
31 commissioner of highways shall make demand for payment of
32 all of the unpaid and uncanceled notes and shall promptly
33 enforce collection thereon and shall deposit the sums so
34 collected thereon in the state road fund. The commissioner of
35 highways is authorized to credit the oldest outstanding notes in
36 the sum of one thousand five hundred dollars every six months
37 that the recipient of the scholarship is employed by the division
38 of highways after completing the course of study for which the
39 scholarship was granted. The commissioner of highways shall
40 have the power and authority to make all necessary rules to
41 carry this section into effect.

CHAPTER 226

(Com. Sub. for H. B. 2254 — By Delegate Warner)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two-a, chapter
seventeen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend and reenact section
five, article seventeen-a of said chapter; and to further amend said
article by adding thereto two new sections, designated sections
five-a and five-b, all relating to authorizing the commissioner of
highways to fix and collect tolls for transit over authorized
highway projects; pledging tolls as security for special obligation
notes; uses and control of tolls; roads upon which tolls may be
charged; and report to joint committee on government and
finance.

Be it enacted by the Legislature of West Virginia:
That section eight, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section five, article seventeen-a of said chapter be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections five-a and five-b, all to read as follows:

Article
2A. West Virginia Commissioner of Highways.
17A. Construction Financing for Surface Transportation Improvements.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.


1 In addition to all other duties, powers and responsibilities given and assigned to the commissioner in this chapter, the commissioner may:

4 (1) Exercise general supervision over the state road program and the construction, reconstruction, repair and maintenance of state roads and highways;

(2) Determine the various methods of road construction best adapted to the various sections and areas of the state and establish standards for the construction and maintenance of roads and highways therein;

(3) Conduct investigations and experiments, hold hearings and public meetings and attend and participate in meetings and conferences within and without the state for purposes of acquiring information, making findings and determining courses of action and procedure relative to advancement and improvement of the state road and highway system;

(4) Enter private lands to make inspections and surveys for road and highway purposes;

(5) Acquire, in name of the department, by lease, grant, right of eminent domain or other lawful means, all lands and interests and rights in lands necessary and required for roads, rights-of-way, cuts, fills, drains, storage for equipment and materials, and road construction and maintenance in general;
(6) Procure photostatic copies of any or all public records on file at the state capitol of Virginia which may be deemed necessary or proper in ascertaining the location and legal status of public road rights-of-way located or established in what is now the state of West Virginia, which photostatic copies, when certified by the commissioner, may be admitted in evidence, in lieu of the original, in any of the courts of this state;

(7) Plan for and hold annually a school of good roads, of not less than three or more than six days' duration, for instruction of his or her employees, which school shall be held in conjunction with West Virginia University and may be held at the university or at any other suitable place in the state;

(8) Negotiate and enter in reciprocal contracts and agreements with proper authorities of other states and of the United States relating to and regulating the use of roads and highways with reference to weights and types of vehicles, registration of vehicles and licensing of operators, military and emergency movements of personnel and supplies and all other matters of interstate or national interest;

(9) Classify and reclassify, locate and relocate, expressway, trunkline, feeder and state local service roads, and designate by number the routes within the state road system;

(10) Create, extend or establish, upon petition of any interested party or parties or on the commissioner's own initiative, any new road or highway as may be found necessary and proper;

(11) Exercise jurisdiction, control, supervision and authority over local roads, outside the state road system, to the extent determined by him or her to be expedient and practicable;

(12) Discontinue, vacate and close any road or highway, or any part thereof, the continuance and maintenance of which are found unnecessary and improper, upon petition and hearing, or upon investigation initiated by the commissioner;

(13) Close any state road while under construction or repair and provide a temporary road during the time of such construction or repair;
(14) Adjust damages occasioned by construction, reconstruction or repair of any state road or the establishment of any temporary road;

(15) Establish and maintain a uniform system of road signs and markers;

(16) Fix standard widths for road rights-of-way, bridges and approaches thereto and fix and determine grades and elevations therefor;

(17) Test and standardize materials used in road construction and maintenance, either by governmental testing and standardization activities or through contract by private agencies;

(18) Allocate the cost of retaining walls and drainage projects, for the protection of a state road or its right-of-way, to the cost of construction, reconstruction, improvement or maintenance;

(19) Acquire, establish, construct, maintain and operate, in the name of the department, roadside recreational areas along and adjacent to state roads and highways;

(20) Exercise general supervision over the construction and maintenance of airports and landing fields under the jurisdiction of the West Virginia state aeronautics commission, of which the commissioner is a member, and make a study and general plan of a statewide system of airports and landing fields;

(21) Provide traffic engineering services to municipalities of the state upon request of the governing body of any such municipality and upon such terms as may be agreeably arranged;

(22) Institute complaints before the public service commission or any other appropriate governmental agency relating to freight rates, car service and movement of road materials and equipment;

(23) Invoke any appropriate legal or equitable remedies to enforce his or her orders, to compel compliance with require-
ments of law and to protect and preserve the state road and
highway system or any part thereof;

(24) Make and promulgate rules and regulations for the
government and conduct of personnel, for the orderly and
efficient administration and supervision of the state road
program and for the effective and expeditious performance and
discharge of the duties and responsibilities placed upon him or
her by law;

(25) Delegate powers and duties to his or her appointees
and employees who shall act by and under his or her direction
and be responsible to him or her for their acts;

(26) Designate and define such construction and mainte-
nance districts within the state road system as may be found
expedient and practicable;

(27) Contract for the construction, improvement and
maintenance of the roads;

(28) Have authority to comply with provisions of present
and future federal aid statutes and regulations, including
execution of contracts or agreements with and cooperation in
programs of the United States government and any proper
department, bureau or agency thereof relating to plans, surveys,
construction, reconstruction, improvement and maintenance of
state roads and highways;

(29) Prepare budget estimates and requests;

(30) Establish a system of accounting covering and includ-
ing all fiscal and financial matters of the department;

(31) Have authority to establish and advance a right-of-way
acquisition revolving fund, a materials revolving fund and an
equipment revolving fund;

(32) Enter into contracts and agreements with and cooperate
in programs of counties, municipalities and other governmental
agencies and subdivisions of the state relating to plans, surveys,
construction, reconstruction, improvement, maintenance and
supervision of highways, roads, streets, and other travel ways
when and to the extent determined by the department to be expedient and practical;

(33) Report, as provided by law, to the governor and the Legislature;

(34) Purchase materials, supplies and equipment required for the state road program and system;

(35) Dispose of all obsolete and unusable and surplus supplies and materials, which cannot be used advantageously and beneficially by the department in the state road program, by transfer thereof to other governmental agencies and institutions by exchange, trade or sale thereof;

(36) Investigate road conditions, official conduct of department personnel and fiscal and financial affairs of the department and hold hearings and make findings thereon or on any other matters within the jurisdiction of the department;

(37) Establish road policies and administrative practices;

(38) Fix and revise from time to time tolls for transit over highway projects constructed by the division of highways after the first day of May, one thousand nine hundred ninety-nine, that have been authorized by the provisions of section five-b, article seventeen-a of this chapter; and

(39) Take actions necessary to alleviate such conditions as the governor may declare to constitute an emergency, whether or not the emergency condition affects areas normally under the jurisdiction of the department of highways.

ARTICLE 17A. CONSTRUCTION FINANCING FOR SURFACE TRANSPORTATION IMPROVEMENTS.


§17-17A-5a. Use of tolls for construction, maintenance, repair and operating costs; use of tolls to pay special obligation notes.

§17-17A-5b. Designation of class of toll roads.


1 In connection with any issue of notes hereunder, the commissioner may pledge or assign, as security for the payment
of the principal of or interest on such notes, any of the follow-
ing:

(a) Any amounts to be received from the United States of
America, or any agency or instrumentality thereof, as reim-
bursements of the costs incurred in connection with the surface
transportation improvements to be financed by such notes,
together with the rights and interests of the state with respect to
such reimbursement;

(b) Any amounts in the state road fund which may properly
be applied to the reimbursements of any such costs pursuant to
article three of this chapter;

(c) The proceeds of any such notes pending their use or of
notes which may be issued to renew or refund such notes;

(d) The proceeds of any insurance or letters of credit or
similar arrangements undertaken in connection with the
acquisition, construction or financing of such surface transpor-
tation improvements;

(e) The proceeds of any tolls, or portions of tolls, charged
and collected pursuant to the provisions of sections five-a and
five-b of this article that are designated by the commissioner as
security for the payment of the principal of or interest on notes
issued for the purposes described in section five-a of this
article; and

(f) Any other amounts specifically designated for the
purpose of paying any such costs, but only to the extent
appropriated by the Legislature and paid from general revenues
prior to such pledge or dedicated for such purpose by the
Legislature from proprietary revenues of the state.

Any such pledge or assignment shall be valid and binding
from the time it is made, and the lien of such pledge or assign-
ment shall be enforceable and need not be perfected by delivery
or any filing or further act. Such lien shall be valid against all
parties having claims of any kind in tort, contract or otherwise,
irrespective of whether such parties have notice of the lien of
such pledge or assignment.
The commissioner may enter into an agreement or agreements with any trust company or with any bank having the power of a trust company, either within or outside of the state, as trustee for the holders of notes issued hereunder, setting forth therein such duties of the state and of the commissioner in respect of the acquisition and construction of surface transportation improvements, the conservation and application of all moneys, the insurance of moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the notes, as may be agreed upon with the original purchasers of such notes, and including therein provisions restricting the individual right of action of holders as is customary in such trust agreements to protect and enforce the rights and remedies of the trustee and the holders. All expenses incurred in carrying out such agreement may be treated as a part of the cost of construction of the surface transportation improvements affected by the agreement.

§17-17A-5a. Use of tolls for construction, maintenance, repair and operating costs; use of tolls to pay special obligation notes.

For highway projects described in section five-b of this article that are constructed after the first day of May, one thousand nine hundred ninety-nine, the commissioner of highways is hereby authorized to fix, revise, charge and collect tolls for transit over the highway projects and the different parts or sections thereof. The tolls shall be fixed and adjusted so that the aggregate of tolls from the project or projects provide a fund sufficient with other revenues, if any, to pay: (1) The cost of constructing, maintaining, repairing and operating such project or projects; and (2) the principal of and the interest on any notes issued to finance the project or projects as the same shall become due and payable, and to create reserves for such purposes. The tolls shall not be subject to supervision or regulation by any other commission, board, bureau, department or agency of the state. The tolls, except such part thereof as may be necessary to pay such cost of construction, maintenance, repair and operation and to provide such reserves therefor as may be provided for in the notes or in the trust agreement.
securing the same, shall be set aside at such regular intervals as may be provided in the notes or the trust agreement in a sinking fund which is hereby pledged to, and charged with the payment of: (1) The interest upon such notes as such interest shall fall due; (2) the principal of such notes as the same shall fall due; (3) the necessary charges of paying agents for paying principal and interest; and (4) the redemption price or the purchase price of notes retired by accelerated payment or purchase as therein provided. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the notes or of the trust agreement. The moneys in the sinking fund, less such reserve as may be provided for in the notes or trust agreement, if not used within a reasonable time for the purchase of notes for cancellation as above provided, shall be applied to the redemption of the notes at the redemption price then applicable.

§17-17A-5b. Designation of class of toll roads.

(a) The commissioner may fix and charge tolls on any road which meets the following criteria:

(1) The road is a fully controlled access, four lane highway; and

(2) The road extends from the border of West Virginia and is a continuation of a fully controlled access four lane highway in the adjacent state; and

(3) The adjacent state charges tolls on its portion of the highway immediately adjacent to West Virginia; and

(4) The West Virginia portion of the highway connects to another fully controlled access four lane highway in West Virginia.

(b) Not less than one hundred eighty days prior to the final decision of the commissioner to charge tolls on any road described in subsection (a) of this section, the commissioner shall provide a report to the joint committee on government and finance setting forth:

(1) The location and a description of the road;
(2) The provisions of any special obligation notes intended by the commissioner to be secured, in whole or in part, by tolls charged on the road and any related trust agreements;

(3) The anticipated amount of tolls to be charged and the duration of time the commissioner expects tolls to be charged on the road; and

(4) Such other information that may be required by the joint committee on government and finance.

CHAPTER 227

(H. B. 2257 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale, exchange or lease of property by the division of highways; and clarifying that only property that was acquired for use, or used, as a highway is required to be offered to abutting landowners prior to sale.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.


(a) The division of highways, subject to the provisions of this section, may sell, exchange or lease real property, or any interest or right in the property, held by the division of highways. When the real property, or any interest or right in the property, is being held for future road purposes, it may be leased.
(b) This subsection applies to property held by the division, including a right-of-way, that was not acquired for use, or used, as a highway. When the real property, or any part of the property, or any interest or right in the property, is considered by the commissioner not necessary, or desirable for present or presently foreseeable future division of highways purposes, it may be exchanged for other real property, or any interest or right in the property, considered by the commissioner to be necessary or desirable for present or presently foreseeable future division of highways purposes, or it may be sold. In addition the division may exchange real property, or any part of the property, or any interest or right in the property, even though it may be necessary or desirable for present or presently foreseeable future division of highways purposes, if the exchange is made for other real property, or any interest or right in the property, in close proximity to the property which the commissioner considers of equal or superior useful value for present or presently foreseeable future division of highways purposes. In making exchanges the division may make allowances for differences in the value of the properties being exchanged and may move or pay the cost of moving buildings, structures or appurtenances in connection with the exchange.

Every sale of real property, or any interest or right in the property or structure on the property, shall be at public auction in the county in which the real property, or the greater part of the property, is located, and the division shall advertise, by publication or otherwise, the time, place, and terms of the sale at least twenty days prior to the sale. The property shall be sold in the manner which will bring the highest and best price. The division may reject any or all bids received at the sale. The commissioner shall keep a record, open to public inspection, indicating the manner in which the real property, or any interest or right in the property or structure on the property, was publicly advertised for sale, the highest bid received and from whom, the person to whom sold, and payment received. The record shall be kept for a period of five years and may be destroyed after five years.

(c)(1) This subsection applies to property held by the
division, including a right-of-way, that was acquired for use, or
used, as a highway. The commissioner may transfer, sell or
otherwise dispose of any right-of-way properties or any interest
or right in the property, owned by or to be acquired by the
division of highways which the commissioner in his or her sole
discretion determines are not necessary or desirable for present
or presently foreseeable future highway purpose by first
offering the property to the principal abutting landowners
without following the procedure for public auction provided in
subsection (b) of this section.

(2) The commissioner shall propose rules for legislative
approval in accordance with the provisions of article three,
chapter twenty-nine-a of this code governing and controlling
the making of any leases or sales pursuant to the provisions of
this subsection. The rules may provide for the giving of
preferential treatment in making leases to the persons from
whom the properties or rights or interests in the property were
acquired, or their heirs or assigns and shall also provide for
granting a right of first refusal to abutting landowners at fair
market value in the sale of any real estate or any interest or
right in the property, owned by the division of highways.

(3)(A) With respect to real property acquired subsequent to
the year one thousand nine hundred seventy-three for use as a
highway through voluntary real estate acquisition or exercise of
the right of eminent domain, which real estate the commis-
sioner has determined should be sold as not necessary for
highways purposes, the commissioner shall give preferential
treatment to an abutting landowner if it appears that:

(i) A principal abutting landowner is an individual from
whom the real estate was acquired or his or her surviving
spouse or descendant. In order to qualify for preferential
treatment, the surviving spouse or descendant need not be a
beneficiary of the individual. The terms used in this subdivision
are as defined in section one, article one, chapter forty-two of
this code; and

(ii) The primary use of the abutting property has not
substantially changed since the time of the acquisition.
(B) When the provisions of paragraph (A) of this subdivision are met, the commissioner shall offer the property for sale to the principal abutting landowner at a cost equal to the amount paid by the division of highways in acquiring the real estate. If improvements on the property have been removed since the time of the acquisition, the cost shall be reduced by an amount attributable to the value of the improvements removed. The cost may be adjusted to reflect interest at a rate equal to the increase in the consumer price index for all urban consumers as reported by the United States department of labor since the time of disbursement of the funds.

(d) The commissioner may insert in any deed or conveyance, whether it involves an exchange, lease or sale, the conditions as are in the public interest and have been approved in advance by the governor.

(e) All moneys received from the exchange, sale, or lease of real property, or any right or interest in the property, shall be paid into the state treasury and credited to the state road fund.

(f) Notwithstanding the provisions of this section, property may not be transferred, sold or otherwise disposed of unless the commissioner finds that the right-of-way or other property has no significant value to the state as a hiking trail and does not serve as a link between two or more state owned properties. This subsection does not apply to property that lies within six hundred feet of any dwelling house.

CHAPTER 228

(H. B. 2359 — By Delegate Warner)

[Passed March 9, 1999; in effect July 1, 1999. Approved by the Governor.]
approved for constructing industrial road sites; providing for an increase in the amount of funding which may be allocated per county per fiscal year; and providing for surety in estimated amount to be expended by the division of highways.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. INDUSTRIAL ACCESS ROAD FUND.

§ 17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.

§ 17-3A-4. Restrictions on use of fund.

§ 17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.

(a) Any other provision of this code notwithstanding, there is hereby continued in the state treasury the "industrial access road fund", referred to in this article as "the fund". There shall be deposited into the fund three fourths of one percent of all state tax collections which are otherwise specifically dedicated by the provisions of this code to the state road fund or the percentage of those tax collections that will produce three million dollars for each fiscal year. At the end of each fiscal year, all unused moneys in the fund revert to the state road fund.

(b) The moneys in the fund shall be expended by the division of highways for constructing and maintaining industrial access roads within counties and municipalities to industrial sites on which manufacturing, distribution, processing or other economic development activities, including publicly owned airports, are already constructed or are under firm contract to be constructed. In the event there is no industrial site already constructed or for which the construction is under firm contract, a county or municipality may guarantee to the division of highways an acceptable surety or a device in an amount equal to the estimated cost of the access road or that portion provided by the division of highways, that an industrial site will
be constructed and if no industrial site acceptable to the
division of highways is constructed within the time limits of the
surety or device, the surety or device shall be forfeited.

§17-3A-4. Restrictions on use of fund.

(a) The fund may not be used for the adjustment of utilities
or for the construction of industrial access roads to schools,
hospitals, libraries, armories, shopping centers, apartment
buildings, government installations or similar facilities, whether
public or private. The fund may not be used to construct
industrial access roads on private property.

(b) Moneys from the fund may not be expended until the
governing body of the county or municipality certifies to the
division of highways that the industrial site is constructed and
operating or is under firm contract to be constructed or oper-
ated, or upon the presentation of an acceptable surety or device
in an amount equal to the estimated cost of the access road or
that portion provided by the division of highways in accordance
with section one of this article.

(c) Not more than four hundred thousand dollars of
unmatched moneys from the fund may be allocated for use in
any one county in any fiscal year. The maximum amount of
unmatched moneys which may be allocated from the fund is ten
percent of the fair market value of the designated industrial
establishment. The amount of unmatched funds allocated may
be supplemented with additional matched moneys from the
fund, in which case the matched moneys allocated from the
fund may not exceed one hundred fifty thousand dollars, to be
matched equally from sources other than the fund. The amount
of matched moneys which may be allocated from the fund over
and above the unmatched funds may not exceed five percent of
the fair market value of the designated industrial site.

(d) Funds may only be allocated to those items of construc-
tion and engineering which are essential to providing an
adequate facility to serve the anticipated traffic. Funds may not
be allocated for items such as storm sewers, curbs, gutters and
extra pavement width unless necessary to extend or connect an
existing access road.
AN ACT to amend and reenact section nineteen, article four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abolishing the requirement that when the commissioner is about to construct or improve any highway, he or she shall file a copy of the plans and notice of the work to be performed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-19. Contracts for construction, materials, etc.; work by prison labor, etc.; bidding procedure.

All work of construction and reconstruction of state roads and bridges, and the furnishing of all materials and supplies therefor, and for the repair thereof shall be done and furnished pursuant to contract except that the commissioner may not be required to award any contract for work, which can be done advantageously, economically and practicably by commission forces or prison labor and by use of state road equipment, or for materials and supplies, which are manufactured, processed or assembled by the commissioner: Provided, That the commissioner may not be required to award any contract for work, materials or supplies for an amount less than three thousand dollars. In all the work, the commissioner shall utilize state road forces or prison labor and state road equipment and shall manufacture, process and assemble all the materials and
supplies for the work whenever and wherever the commis-

15 sioner, in his or her discretion, finds work and services advanta-
16 geous, economical and practicable in the state road program.

17 If the work is to be done, or the materials therefor are to be
18 furnished by contract, the commissioner shall thereupon publish
19 the following described advertisement as a Class II legal
20 advertisement in compliance with the provisions of article
21 three, chapter fifty-nine of this code, and the publication area
22 for the publication shall be the county or municipality in which
23 the road lies. The advertisement shall also be published at least
24 once in at least one daily newspaper published in the city of
25 Charleston and in other journals or magazines as may to the
26 commissioner seem advisable. The advertisement shall solicit
27 sealed proposals for the construction or other improvement of
28 the road, and for the furnishing of materials therefor, accurately
29 describing the same, and stating the time and place for opening
30 the proposals and reserving the right to reject any and all
31 proposals: Provided, That whenever the estimated amount of
32 any contract for work or for materials or supplies is less than
33 three thousand dollars, the commissioner may not be required
34 to advertise the letting of the contract in newspapers as above
35 required, but may award the contract to the lowest responsible
36 bidder, when two or more sealed proposals or bids have been
37 received by him or her without the advertisement, but the
38 contract may not be so awarded unless the bid of the successful
39 bidder is three thousand dollars or less. The commissioner shall
40 have the power to prescribe proper prequalifications of contrac-
41 tors bidding on state road construction work. To all sealed
42 proposals there shall be attached the certified check of the
43 bidder or bidder's bond acceptable to the commissioner, in the
44 amount as the commissioner shall specify in the advertisement,
45 but not to exceed five percent of the aggregate amount of the
46 bid; but the amount shall never be less than five hundred
47 dollars. The proposals shall be publicly opened and read at the
48 time and place specified in the advertisement, and the contract
49 for the work, or for the supplies or materials required therefor
50 shall, if let, be awarded by the commissioner to the lowest
51 responsible bidder for the type of construction selected. In case
chapter 230

(Com. Sub. for S. B. 420 — By Senators Snyder, Unger, Anderson, Edgell, Kessler and Ball)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties of drivers involved in accidents; clarifying duty to remain at scene of accident and to render aid to an injured person; and increasing the criminal penalties for leaving the scene of an accident resulting in a person’s death.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ACCIDENTS.

§17C-4-1. Accidents involving death or personal injuries.

(a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and shall remain at the scene of the accident until he or she has complied with the requirements of section three of this article: Provided, That the driver may leave the scene of the accident as may reasonably be necessary for the purpose of rendering assistance to an injured person as required by said section three. Every such stop shall be made without obstructing traffic more than is necessary.
(b) Any person violating the provisions of subsection (a) of this section after being involved in an accident resulting in the death of any person is guilty of a felony and, upon conviction thereof, shall be punished by confinement in a correctional facility for not more than three years or fined not more than five thousand dollars, or both.

(c) Any person violating the provisions of subsection (a) of this section after being involved in an accident resulting in physical injury to any person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by confinement in a county or regional jail for not more than one year, or fined not more than one thousand dollars, or both.

(d) The commissioner shall revoke the license or permit to drive and any nonresident operating privilege of any person convicted pursuant to the provisions of this section for a period of one year.

CHAPTER 231

(Com. Sub. for S. B. 412 — By Senators Love, Schoonover and Fanning)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-three, relating to traffic regulations and laws of the road; providing for right-of-way for funeral processions; defining terms; establishing equipment requirements; and liability.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-three, to read as follows:
ARTICLE 23. FUNERAL PROCESSIONS.

§ 17C-23-1. Definitions.

§ 17C-23-2. Funeral procession right-of-way; funeral escort vehicles; funeral lead vehicles.

§ 17C-23-3. Driving in procession.

§ 17C-23-4. Liability.

§ 17C-23-5. Equipment.

§ 17C-23-1. Definitions.

(a) "Funeral director" and "funeral establishment" have the same meaning as set forth in section four, article six, chapter thirty of this code.

(b) "Funeral procession" means two or more vehicles accompanying the body of a deceased person, or traveling to the church, chapel, cemetery or other location at which the funeral service or final disposition is to be held, including a funeral lead vehicle or a funeral escort vehicle.

(c) "Funeral lead vehicle" means any authorized law enforcement or nonlaw-enforcement motor vehicle or a funeral escort vehicle being used to lead and facilitate the movement of a funeral procession. A funeral hearse may serve as a funeral lead vehicle.

(d) "Funeral escort" means a person or entity that provides escort services for funeral processions, including law-enforcement personnel and agencies.

(e) "Funeral escort vehicle" means any motor vehicle that escorts a funeral procession.

§ 17C-23-2. Funeral procession right-of-way; funeral escort vehicles; funeral lead vehicles.

(a) Regardless of any traffic control device or right-of-way provisions prescribed by state or local ordinance, pedestrians and operators of all vehicles, except as stated in subsection (c) of this section, shall yield the right-of-way to any vehicle which is part of a funeral procession being led by a funeral escort vehicle or a funeral lead vehicle.
(b) When the funeral lead vehicle lawfully enters an intersection, either by reason of a traffic control device or at the direction of law-enforcement personnel, the remaining vehicles in the funeral procession may follow through the intersection regardless of any traffic control devices or right-of-way provisions prescribed by state or local law.

(c) Funeral processions have the right-of-way at intersections regardless of traffic control devices subject to the following conditions and exceptions:

(1) Operators of vehicles in a funeral procession shall yield the right-of-way to an approaching emergency vehicle giving an audible or visible signal;

(2) Operators of vehicles in a funeral procession shall yield the right-of-way when directed to do so by a police officer; and

(3) Operators of vehicles in a funeral procession must exercise due care when participating in a funeral procession.

§17C-23-3. Driving in procession.

(a) All vehicles comprising a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practical and safe.

(b) Any ordinance, law or rule stating that motor vehicles shall be operated to allow sufficient space enabling any other vehicle to enter and occupy such space without danger is not applicable to vehicles in a funeral procession.

§17C-23-4. Liability.

Liability for any death, personal injury or property damage suffered on or after the first day of July, one thousand nine hundred ninety-nine, by any person in a funeral procession may not be imposed upon a funeral director or funeral establishment or their employees or agents unless the death, personal injury or property damage is proximately caused by the negligent or intentional act of a funeral director or funeral establishment or their employees or agents.
§17C-23-5. Equipment.

1 All nonlaw-enforcement funeral escort vehicles and funeral lead vehicles may be equipped with at least one lighted circulation flashing lamp exhibiting an amber or purple light or lens.
2 Flashing amber or purple lights may be used when such vehicles are used in a funeral procession.

CHAPTER 232

(Com. Sub. for H. B. 2871 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter fifteen of said code by adding thereto a new article, designated article twelve; to amend and reenact section seven, article five, chapter forty-eight; and to amend and reenact section two, article twelve, chapter sixty-two of said code, all relating to the registration of sex offenders; stating the intent and findings; applying the act retroactively and prospectively; requiring persons to register; requiring notification; providing a central registry; providing definitions; establishing a judicial process; providing information to the state police; establishing advisory board; requiring registration within ten days of change in address; providing duration of registration; distributing registration information; exempting freedom of information act disclosure; providing governmental immunity; providing duties of officials; establishing procedure for registrants moving out of state; establishing offense and penalties for failing to provide information and register; registering out-of-state offenders; establishing a verification process; providing eligibility for probation; and prohibiting name change.

Be it enacted by the Legislature of West Virginia:
That article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter fifteen of said code be amended by adding thereto a new article, designated article twelve; that section seven, article five, chapter forty-eight of said code be amended and reenacted; and that section two, article twelve, chapter sixty-two of said code be amended and reenacted, all to read as follows:

Chapter
15. Public Safety.
48. Public Safety.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-1. Short title.
§15-12-1a. Intent and findings.
§15-12-2. Registration.
§15-12-2a. Court determination of sexually violent predator.
§15-12-2b. Creation of sex offender registration advisory board.
§15-12-3. Change of address.
§15-12-4. Duration.
§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.
§15-12-6. Duties of institution officials.
§15-12-7. Information shall be released when person moves out of state.
§15-12-8. Failure to register; penalty.
§15-12-10. Address verification.

§15-12-1. Short title.

This article may be cited as the “Sex Offender Registration Act.”

§15-12-1a. Intent and findings.

(a) It is the intent of this article to assist law-enforcement agencies’ efforts to protect the public from sex offenders by requiring sex offenders to register with the state police detachment in the county where he or she shall reside, and by making certain information about sex offenders available to the public as provided in this article. It is not the intent of the Legislature that the information be used to inflict retribution or additional punishment on any person convicted of any offense requiring registration under this article. This article is intended to be
regulatory in nature, and not penal.

(b) The Legislature finds and declares that there is a compelling and necessary public interest that the public have information concerning persons convicted of sexual offenses pursuant to this chapter to allow members of the public to adequately protect themselves and their children from these persons.

§15-12-2. Registration.

(a) The provisions of this act apply both retroactively and prospectively.

(b) Any person who has been convicted of a violation of the following provisions of chapter sixty-one of this code shall register as set forth in subsections (c) and (d) of this article, and according to the internal management rules and regulations promulgated by the superintendent under authority of section twenty-five, article two, chapter fifteen of this code:

(1) Article eight-b;

(2) Article eight-c;

(3) Sections five and six, article eight-d;

(4) Section fourteen, article two;

(5) Sections six, seven, twelve and thirteen, article eight;

(6) A similar provision in another state, federal or military jurisdiction for offenses listed above.

(i) Any person who has been convicted of an attempt to commit any of the offenses set forth in this section shall also register as set forth in this article.

(ii) Any person who has been convicted of a criminal offense, which at the time of sentencing, was found by the sentencing judge to have been sexually motivated, shall also register as set forth in this article.

(c) Persons required to register under the provisions of this act shall provide or cooperate in providing, at a minimum, the
following information when registering:

(1) The full name of the registrant;
(2) The address where the registrant shall reside;
(3) The registrant’s social security number;
(4) A full face photograph of the registrant at the time of registration;
(5) A brief description of the crime(s) for which the registrant was convicted; and
(6) Fingerprints.

(d) On the date that any person convicted of any of the crimes listed herein, including those persons continuing under some post conviction supervisory status for crimes committed prior to the date of this law, is released, is granted probation, is granted a suspended sentence, is released on parole, probation, home detention, work release or any other release from incarceration, the commissioner of corrections, regional jail administrator 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, inform the person of his or her duty to register, 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.

(e) 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.

(f) 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.

(g) 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. The information required to be made public by the state police by subdivision (2), subsection (b), section five of this article shall be accessible through the Internet.

(h) For the purpose of this article, "sexually violent offense" means:

(1) Sexual assault in the first degree as set forth in section
three, article eight-b, chapter sixty-one of this code, or of a
similar provision in another state, federal or military jurisdic-
tion;

(2) Sexual assault in the second degree as set forth in
section four, article eight-b, chapter sixty-one of this code, or of
a similar provision in another state, federal or military jurisdic-
tion;

(3) Sexual assault of a spouse as set forth in section six,
article eight-b, chapter sixty-one of this code, or of a similar
provision in another state, federal or military jurisdiction;

(4) Sexual abuse in the first degree as set forth in section
seven, article eight-b, chapter sixty-one of this code, or of a
similar provision in another state, federal or military jurisdic-
tion.

(i) The term "sexually motivated" means that one of the
purposes for which a person committed the crime was for the
purpose of any person's sexual gratification.

(j) The term "sexually violent predator" means a person
who has been convicted of a sexually violent offense and who
suffers from a mental abnormality or personality disorder that
makes the person likely to engage in predatory sexually violent
offenses.

(k) The term "mental abnormality" means a congenital or
acquired condition of a person that affects the emotional or
volitional capacity of the person in a manner that predisposes
that person to the commission of criminal sexual acts to a
degree that makes the person a menace to the health and safety
of other persons.

(l) The term "predatory act" 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 victimiza-
tion.

§15-12-2a. Court determination of sexually violent predator.

(a) The circuit court that has sentenced a person for having
committed a sexually violent offense shall make a determina-
tion whether:

(1) A person is a sexually violent predator; or

(2) A person is no longer a sexually violent predator.

(b) A hearing to make a determination as provided for in
subsection (a) of this section is a summary proceeding, triable
before the court without a jury.

(c) A proceeding seeking to establish that a person is a
sexually violent predator is initiated by the filing of a written
information by the prosecuting attorney. The information shall
describe the record of the judgment of the court on the person’s
conviction of a sexually violent offense, and shall set forth a
short and plain statement of the prosecutor’s claim that the
person suffers from a mental abnormality or personality
disorder that makes the person likely to engage in predatory
sexually violent offenses.

(d) A proceeding seeking to establish that a person is no
longer a sexually violent predator is initiated by the filing of a
petition by the person who has been determined to be a sexually
violent predator.

(e) Prior to making a determination pursuant to the provi-
sions of this section, the sentencing court may order a psychia-
tric or other clinical examination and, after such examination,
may further order a period of observation in an appropriate
facility within this state designated by the court after consulta-
tion with the director of the division of health.

(f) Prior to making a determination pursuant to the provi-
sions of this section, the sentencing court shall request and
receive a report by the board established pursuant to section
two-b of this article. The report shall set forth the findings and
recommendation of the board on the issue of whether the person
is a sexually violent predator.

(g) At a hearing to determine whether a person is a sexually
violent predator, the person shall be present and shall have the
right to be represented by counsel and introduce evidence and
cross-examine witnesses. The offender shall have access to a
summary of the medical evidence to be presented by the state.
The offender shall have the right to an examination by an
independent expert of his choice and testimony from such
expert as a medical witness on his behalf. At the termination of
such hearing the court shall make a finding of fact upon a
preponderance of the evidence as to whether the person is a
sexually violent predator.

(h) If a person is determined by the circuit court to be a
sexually violent predator, the clerk of the court shall forward a
copy of the order to the state police in the manner promulgated
in accordance with the provisions of article three, chapter
twenty-nine-a of this code.

§15-12-2b. Creation of sex offender registration advisory board.

(a) There is hereby created within the department of
military affairs and public safety a sex offender registration
advisory board consisting of a minimum of five members
appointed by the secretary of the department of military affairs
and public safety. At least two of the members shall be experts
in the field of the behavior and treatment of sexual offenders,
and each shall be a physician, psychologist or social
worker in the employ of this state appointed by the secretary in consulta-
tion with the director of the division of health. The remaining
members shall be victims rights advocates and representatives
of law-enforcement agencies. Members of the board shall be
reimbursed their reasonable expenses pursuant to the rules
promulgated by the department of administration for the
reimbursement of expenses of state officials and employees and
shall receive no other compensation for their services. The
board shall utilize the staff of the division or office within the
department of military affairs and public safety designated by
the secretary thereof in carrying out its duties and responsibili-
ties as set forth in this article.

(b) The board shall assist the circuit courts of this state in
determining whether persons convicted of sexually violent
§15-12-3. Change of address.

When any person required to register under this article changes his or her residence or address, he or she shall, within ten days, inform the West Virginia state police of his or her new address in the manner prescribed by the superintendent of state police in procedural rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§15-12-4. Duration.

(a) A person required to register under the terms of this article shall continue to comply with this section, except during ensuing periods of incarceration, until:

(1) Ten years have elapsed since the person was released from prison or jail, or ten years have elapsed since the person was placed on probation, parole or supervised release. The ten year registration period shall not be reduced by the sex offender's release from probation, parole or supervised release; or

(2) For the life of that person if that person: (A) Has one or more prior convictions for any qualifying offense referred to in this article; or (B) has been convicted of a qualifying offense as referred to in this article, and upon motion of the prosecuting attorney, the court finds by clear and convincing evidence, that the qualifying offense involved multiple victims or multiple violations of the qualifying offense; or (C) has been convicted of a sexually violent offense; or (D) has been determined to be a sexually violent predator as defined above; or (E) has been convicted of a qualifying offense as referred to in this article, involving a minor.

(b) A person whose conviction is overturned for the offense which required them to register under this article shall, upon petition to the court, have their name removed from the registry.

§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and
state police; petition to circuit court.

(a) Within five working days after receiving any notification as described in this article, the state police shall distribute a copy of the notification statement to:

(1) The supervisor of each county and municipal law-enforcement office in the city and county where the person will reside;

(2) The county superintendent of schools where the person will reside;

(3) The child protective services office charged with investigating allegations of child abuse or neglect in the county where the person will reside;

(4) All community organizations or religious organizations which regularly provide services to youths in the county where the person will reside;

(5) Individuals and organizations which provide day care services for youths or day care, residential or respite care, or other supportive services for incapacitated infirm or mentally incapacitated or infirm persons in the county where the registered person will reside; and

(6) The federal bureau of investigation (FBI).

(b) Information concerning persons whose names are contained on the list of the sexual offender registry, and are not required to register for life, shall be disseminated only in the following manner, and not be subject to the requirements of the West Virginia freedom of information act of this code:

(1) When a person has been determined to be a sexually violent predator under the terms of section two-a of this article, the state police shall notify the prosecuting attorney of the county in which the person intends to reside. The prosecuting attorney shall in cooperation with the state police conduct a community notification program which shall include publication of the offender’s name, photograph, and place of residence, and information concerning the legal rights and obligations of
both the offender and the community. The prosecuting attorney
and state police may conduct a community notification program
in the county of residence of any person who is required to
register for life under the terms of subdivision (2), subsection
(a), section four of this article. Community notification may be
repeated when determined appropriate by the prosecuting
attorney;

(2) The state police shall maintain and make available to
the public at least quarterly the list of all persons who are
required to register for life according to the terms of subdivi-
sion (2), subsection (a), section four of this article. The method
of publication and access to this list shall be determined by the
superintendent; and

(3) A resident of a county may petition the circuit court for
an order requiring the state police to release information about
persons residing in that county who are required to register
under section two of this article. The court shall determine
whether information contained on the list and relevant to public
safety outweighs the importance of confidentiality, and if the
court orders information to be released, it may further order
limitations upon secondary dissemination by the resident
seeking the information. In no event shall information concern-
ing the identity of a victim of an offense requiring registration
be released.

(c) The state police may furnish information and documen-
tation required in connection with the registration to authorized
law-enforcement and governmental agencies of the United
States and its territories, of foreign countries duly authorized to
receive the same, of other states within the United States and of
the state of West Virginia upon proper request stating that the
records will be used solely for law-enforcement related pur-
poses. The state police may disclose information collected
under this article to federal, state and local governmental
agencies responsible for conducting pre-employment checks.

(d) An elected public official, public employee or public
agency is immune from civil liability for damages arising out
of any action relating to the provisions of this section except when the official, employee or agency acted with gross negligence or in bad faith.

§15-12-6. Duties of institution officials.

1 In addition to the duties imposed by sections two and four of this article, any person required to register under this article, before parole or release, shall be informed of their duty to register by the official in charge of the place of confinement. Further, the official shall obtain a statement signed by the person acknowledging that the person has been informed of their duty to register.

§15-12-7. Information shall be released when person moves out of state.

1 A person who is required to register pursuant to the provisions of this article, who intends to move to another state or country shall at least ten days prior to such move notify the state police of his or intent to move and of the location to which he or she intends to move, or if that person is incarcerated he or she shall notify correctional officials of his or her intent to reside in some other state or country upon his or her release, and of the location to which he or she intends to move. Upon such notification, the state police shall notify law-enforcement officials of the jurisdiction where the person indicates he or she intends to reside of the information provided by the person under the provisions of this article.

§15-12-8. Failure to register; penalty.

(a) Except as outlined below, any person required to register under this article who knowingly provides false identity or address information or who refuses to provide such accurate information when so required by terms of this article, or who knowingly fails to register or knowingly fails to provide a change of address as required by this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars, or imprisoned in the county jail not more than one year,
or both fined and imprisoned: *Provided*, That each time such person changes residence and fails to register, such failure shall constitute a separate offense.

(b) Any person required to register under this article who is convicted of a second or subsequent offense of failing to register or provide a change of address as required, or any person who has one or more prior convictions for any conviction for a sexually violent offense, and who fails to register is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state penal facility for not less than one year nor more than five years.

(c) Any person required to register as a sexual predator as defined by section two of this article, who fails to register or provide a change of address as required by this article is guilty of a felony and, upon conviction thereof, shall, for a first offense, be imprisoned in a state correctional facility not less than two years nor more than ten years, and for a second or subsequent offense, be imprisoned in a state correctional facility not less than five years nor more than twenty years.

(d) In addition to any other penalty specified for failure to register under this article, any person under the supervision of a probation officer, parole officer or any other sanction short of confinement in jail or prison, who knowingly refuses to register, or who knowingly fails to provide a change of address as required by this article, shall be subject to immediate revocation of probation or parole and returned to confinement for the remainder of any suspended or unserved portion of his or her original sentence.


(a) When any probation or parole officer accepts supervision of and has legal authority over any person required to register under this article from another state under the terms and conditions of the uniform act for out-of-state parolee supervision established under article six, chapter twenty-eight of this code, such officer shall give the person written notice of the registration requirements of this section and obtain a signed
statement from the person required to register acknowledging the receipt of the notice. The officer shall obtain and submit to the state police the identical information required of persons convicted in this state under subsection (b), section two of this article.

(b) Any person:

(1) Who resides in another state;

(2) Who is employed, carries on a vocation or is a student in this state; and

(3) Who is required by the state in which he or she resides to register in that state under provisions of the law of that state that are similar to the provisions of this article, shall register in this state and otherwise comply with the provisions of this article.

§15-12-10. 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. The state police may require registrants to periodically submit to new fingerprints and photographs as part of the verification process. The method of verification shall be in accordance with internal management rules pertaining thereto promulgated by the superintendent under authority of section twenty-five, article two, chapter fifteen of this code.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 5. CHANGE OF NAME.

§48-5-7. Unlawful change of name by certain felons and registrants.

(a) It is unlawful for any person convicted of first degree murder in violation of section one, article two, chapter sixty-one of this code, and for any person convicted of violating any provision of section fourteen-a, article two, chapter sixty-one of this code, for which a sentence of life imprisonment is imposed,
to apply for a change of name for a period of ten years after the
person is discharged from imprisonment or is discharged from
parole, whichever occurs later.

(b) It is unlawful for any person required to register with
the state police pursuant to the provisions of article twelve,
chapter fifteen of this code to apply for a change of name
during the period that the person is required to register.

(c) It is unlawful for any person convicted of a felony to
apply for a change of name during the period that such person
is incarcerated.

(d) A person who violates the provisions of subsections (a),
(b) or (c) of this section is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than two hundred fifty
dollars nor more than ten thousand dollars or imprisoned in the
county or regional jail for not more than one year, or both fined
and incarcerated.

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 eighteen and
nineteen, article eleven, chapter sixty-one of this code.

(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, chapter sixty-one of this code, or under the provisions of article eight-c or eight-b of said chapter, 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 sections five and six, article eight-d, chapter sixty-one of this code, or of section fourteen, article two, or of sections twelve and thirteen, article eight, chapter sixty-one of this code, or of a felony violation involving a minor of section six or seven, article eight, 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.
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-a, article twelve, chapter fifteen 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 233

(H. B. 2719 — By Delegates Givens, Yeager, Thompson and Kelley)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section four, article six, chapter fifteen 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 six-a, all to read as follows:

ARTICLE 6. STATE ARMORY BOARD.

§15-6-4. State armory board — Generally.

§15-6-6a. Transfer of powers and duties to the adjutant general.

§15-6-4. State armory board — Generally.

The state armory board is continued. The board may sue and be sued, and plead and be impleaded. It is a body corporate and is an agency of the state. The exercise by the board of the powers conferred by this article in the acquisition, financing, construction, operation and maintenance of armories and armory projects is an essential governmental function. The board consists of the governor or his or her designee, the secretary of state and the auditor. The governor or his or her designee, is chairman of the board and the secretary of state is the secretary of the board. Two members of the board is a quorum and the vote of two members is necessary for any action taken by the board.

The members and officers of the board are not entitled to compensation for their services, but each member shall be reimbursed for expenses necessarily incurred in the performance of his or her duties.

§15-6-6a. Transfer of powers and duties to the adjutant general.

(a) Notwithstanding the provisions of sections five and six of this article, all powers and duties of the state armory board, with respect to any armory or armory project upon which there is no bonded indebtedness, and the income of which is not dedicated to retire any bonded indebtedness, to maintain, repair, operate, manage and control the armories; to fix, revise charge and collect rentals; to establish bylaws and rules for their use and operation; to enter into contracts and other agreements; and
to manage and control the financial operations of armory facilities, are hereby transferred to the adjutant general.

(b) The adjutant general shall transfer any moneys appropriated to the adjutant general necessary for operation and maintenance of those national guard armories secured by bonded indebtedness to the state armory board, and these moneys may not be commingled with other funds. With respect to all other appropriated moneys, whether from state or federal funds, the adjutant general has signature authority with respect to the management of state armory facilities, is authorized to issue requisitions upon the auditor for payment of money out of the state treasury and has all the powers of the principle officer of a state spending unit.

(c) The special revenue account of the state armory board provided for in section ten of this article and designated the "general armory fund," together with all unexpended balances remaining in the account on the first day of July, one thousand nine hundred ninety-nine, shall be transferred on that date to the adjutant general.

CHAPTER 234

(Com. Sub. for H. B. 2136 — By Delegates Manuel, Doyle and Rowe)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-b, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state building code; and establishing compliance criteria applicable to renovations performed upon certain historic buildings.

Be it enacted by the Legislature of West Virginia:
That section five-b, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5b. Promulgation of rules and statewide building code.

(a) The state fire commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a state building code. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the state building code.

(b) The state fire commission has authority to propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, regarding building construction, renovation and all other aspects as related to the construction and mechanical operations of a structure. The rules shall be known as the "State Building Code."

(c) For the purpose of this section the term "building code" is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county or municipal ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the state building code, the provisions of the state law, county or municipal ordinance or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the state fire commission determines the relative priority of any such state law, county or municipal ordinance or regulation of any agency thereof and determines compliance with state building code by officials of the state, counties, municipalities and political subdivisions of the state.
(d) Enforcement of the provisions of the state building code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: Provided, That any county or municipality may adopt the state building code with or without adopting the BOCA national property maintenance code.

(e) After the state fire commission has promulgated rules as provided in this section, each county or municipality intending to adopt the state building code shall notify the state fire commission of its intent.

(f) The state fire commission may conduct public meetings in each county or municipality adopting the state building code to explain the provisions of the rules.

(g) The provisions of the state building code relating to the construction, repair, alteration, restoration and movement of structures are not mandatory for existing buildings and structures identified and classified by the state register of historic places under the provisions of section eight, article one, chapter twenty-nine of this code, or the national register of historic places, pursuant to Title XVI, section 470a of the United States Code. Prior to renovations regarding the application of the state building code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the division of culture and history, state historic preservation office. The final decision is vested in the state fire commission. Additions constructed on a historic building are not excluded from complying with the state building code.

CHAPTER 235

(S. B. 242 — By Senator Dittmar)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]
AN ACT to amend article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven-b, relating to directing the state building commission to transfer unexpended funds from completed certified state park bond projects to certified state park bond projects that will experience cost overruns; requiring commission to consult with division of natural resources to identify projects that will be completed with unexpended funds and prioritize those projects to receive funds; providing that public hearing requirements do not apply to reallocation of funds among previously certified bond projects; and requiring commissioner to report details of transfers to the joint committee on government and finance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-11b. Power of commission to transfer project funds to other certified projects for state parks.

(a) The state building commission shall transfer unexpended funds allocated to any certified state park project under subsection (f), section eleven-a of this article that has been completed to any other state park project that has been certified under that subsection where the state park project has not been completed and the commission determines that the project is experiencing cost overruns and needs additional funding. Prior to transferring the funds, in consultation with the division of natural resources, the commission shall identify all certified state park projects that will be completed with unexpended funds allocated to them and, in consultation with the division of natural resources, shall prioritize the projects that need additional funding to achieve the best possible allocation of the unexpended funds.
(b) The provisions of subsection (f), section eleven-a of this article requiring public hearing do not apply to transfers of funds under subsection (a) of this section.

(c) The commission shall report all details of any transfer made pursuant to this section to the joint committee on government and finance within ten days of the date of the transfer.

CHAPTER 236

(H. B. 2141 — By Delegates Michael and Martin)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six and seven, article eighteen, chapter twenty-nine of said code, all relating to the state rail authority generally; exempting the state rail authority as an agency for which the secretary of administration is to provide alternative fuel vehicles; legislative rules; providing special competitive bid requirements in certain circumstances; providing exemption from competitive bid requirements in certain circumstances; and permitting state rail authority to enter into contracts or agreements with the division of highways for the lease or purchase and maintenance of vehicles.

Be it enacted by the Legislature of West Virginia:

That section two, article two-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections six and seven, article eighteen, chapter twenty-nine of said code be amended and reenacted, all to read as follows:
§5A-2A-2. Purchase or lease of fleet vehicles; use of alternative fuels.

(a) After the first day of September, one thousand nine hundred ninety-three, the secretary may purchase or lease alternative fuel vehicles for use by any state agency.

(b) The secretary may acquire or be provided with equipment or refueling facilities necessary to operate alternative fuel vehicles by any of the following methods:

(1) Purchase or lease as authorized by law;

(2) Gift or loan of the equipment or facilities; or

(3) Gift or loan of the equipment or facilities or other arrangement pursuant to a service contract for the supply of alternative fuels.

(c) If such equipment or facilities are donated, loaned or provided through other arrangement with the supplier of alternative fuels, the supplier shall be entitled to recoup its actual cost of donating, loaning or providing the equipment or facilities through its fuel charges under the fuel supply contract.

(d) Of the total number of vehicles acquired or caused to be acquired by the secretary for use by any state agency vehicle fleet:

(1) Twenty percent in fiscal year one thousand nine hundred ninety-five;

(2) Thirty percent in fiscal year one thousand nine hundred ninety-six;

(3) Fifty percent in fiscal year one thousand nine hundred ninety-seven, shall be alternative fuel vehicles.
(e) The secretary shall review this alternative fuel use program on or before the thirty-first day of December, one thousand nine hundred ninety-seven, and if the secretary determines that the program is effective in reducing costs to the state, taking into consideration the cost of operating alternative fuel vehicles over the expected useful life of the vehicles, the secretary shall, of the total number of vehicles acquired in each fiscal year, acquire at least seventy-five percent alternative fuel vehicles for state agency fleets beginning the first day of September, one thousand nine hundred ninety-eight, and thereafter.

(f) The secretary shall, in the annual fiscal report to the Legislature, show the progress in achieving these percentage requirements by itemizing purchases, leases and conversions of motor vehicles and usage of alternative fuels.

(g) The secretary, in the development of the alternative fuel use program, shall consult with state agency fleet operators, vehicle manufacturers and converters, fuel distributors and others to delineate the vehicles to be covered, taking into consideration range, specialty uses, fuel availability, vehicle manufacturing and conversion capability, safety, resale values and other relevant factors. In order to maximize the savings to the state, the secretary shall attempt to the extent possible to convert first those vehicles that are used the most often for the most miles. The secretary may meet the percentage requirements of this section through purchase or lease of new vehicles, purchase or lease of used alternative fuel vehicles or the conversion of existing vehicles, in accordance with federal and state requirements and applicable safety laws and standards, to use alternative fuels.

(h) The secretary may reduce any percentage specified or waive the requirements of subsection (d) of this section for any state agency upon a determination by the secretary that either of the following situations apply:

(1) The agency’s vehicles will be operating primarily in an area in which neither the agency nor a supplier has or can
The agency is unable to acquire or be provided equipment or refueling facilities necessary to operate alternative fuel vehicles at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied.

(i) The provisions of this section do not apply to:

(1) Vehicles operated by law-enforcement agencies;
(2) Emergency vehicles;
(3) Vehicles operated by public transit authorities;
(4) School buses;
(5) Vehicles operated by the state rail authority; or
(6) Nonroad vehicles, including farm and construction vehicles.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.


The West Virginia state rail authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose.

(a) The authority shall have the power and capacity to:

(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and legislative rules to implement and make effective its powers and duties, such rules to be promul-
gated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under sections ten, eleven and sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County. The location of the principal office of the authority shall be determined by the governor.

(5) Make loans and grants to governmental agencies and persons for carrying out railroad projects by any such governmental agency or person and, in accordance with chapter twenty-nine-a of this code, adopt legislative rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, railroad projects and, in accordance with chapter twenty-nine-a of this code, adopt legislative rules for the use of these projects.

(7) Make available the use or services of any railroad project to one or more persons, one or more governmental agencies, or any combination thereof.

(8) Issue railroad maintenance authority bonds and notes and refunding bonds of the state, payable solely from revenues as provided in section ten of this article unless the bonds are refunded by refunding bonds, for the purpose of paying any part of the cost of one or more railroad projects or parts thereof.

(9) Acquire, by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.
(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it considers proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, rail properties and appurtenant rights and interests necessary for carrying out railroad projects.

(11) (A) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers.

(B) Where rolling stock, equipment or trackage of the authority is in need of immediate maintenance, repair or reconstruction in order to avoid a cessation of its operations, economic loss, the inability to provide essential service to customers or danger to authority personnel or the public, the following requirements and procedures for entering into the contract or agreement to remedy the condition shall be in lieu of those provided in article three, chapter five-a of this code or any legislative rule promulgated pursuant thereto:

(i) If the cost under the contract or agreement involves an expenditure of more than one thousand dollars, but ten thousand dollars or less, the authority shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three oral bids made pursuant to the requirements of the contract or agreement.

(ii) If the cost under the contract or agreement, other than one for compensation for personal services, involves an expenditure of more than ten thousand dollars, but twenty-five thousand dollars or less, the authority shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three bids, submitted to the authority in writing on letterhead stationery, made pursuant to the requirements of the contract or agreement.

(C) Notwithstanding any other provision of this code to the contrary, a contract or lease for the operation of a railroad project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a railroad
78 project pursuant to section sixteen of this article is not subject
79 to the provisions of article three, chapter five-a of this code or
80 any legislative rule promulgated pursuant thereto, and the
81 authority may enter into the contract or lease or the agreement
82 pursuant to negotiation and upon such terms and conditions and
83 for a period of time as it finds to be reasonable and proper
84 under the circumstances and in the best interests of proper
85 operation or of efficient acquisition or construction of the
86 railroad project.

(D) The authority may reject any and all bids. A bond with
87 good and sufficient surety, approved by the authority, shall be
88 required of all contractors in an amount equal to at least fifty
89 percent of the contract price, conditioned upon the faithful
90 performance of the contract.

(12) Appoint a director and employ managers, superinten-
92 dents and other employees and retain or contract with consult-
93 ing engineers, financial consultants, accountants, attorneys and
94 other consultants and independent contractors as are necessary
95 in its judgment to carry out the provisions of this article, and fix
96 the compensation or fees thereof. All expenses thereof shall be
97 payable from the proceeds of railroad maintenance authority
98 revenue bonds or notes issued by the authority, from revenues
99 and funds appropriated for this purpose by the Legislature or
100 from grants from the federal government which may be used for
101 such purpose.

(13) Receive and accept from any state or federal agency,
102 grants for or in aid of the construction of any railroad project or
103 for research and development with respect to railroads and
104 receive and accept aid or contributions from any source of
105 money, property, labor or other things of value, to be held, used
106 and applied only for the purposes for which such grants and
107 contributions are made.

(14) Engage in research and development with respect to
108 railroads.

(15) Purchase fire and extended coverage and liability
110 insurance for any railroad project and for the principal office
and suboffices of the authority, insurance protecting the
authority and its officers and employees against liability, if any,
for damage to property or injury to or death of persons arising
from its operations and be a member of, and to participate in,
the state workers' compensation program.

(16) Charge, alter and collect rates, rentals and other
charges for the use or services of any railroad project as
provided in this article.

(17) Do all acts necessary and proper to carry out the
powers expressly granted to the authority in this article.

(b) In addition, the authority shall have the power to:

(1) Acquire rail properties both within and not within the
jurisdiction of the interstate commerce commission and rail
properties within the purview of the federal Regional Rail
Reorganization Act of 1973, any amendments to it and any
other relevant federal legislation.

(2) Enter into agreements with owners of rail properties for
the acquisition of rail properties or use, or both of rail proper-
ties upon the terms, conditions, rates or rentals that can best
effectuate the purposes of this article.

(3) Acquire rail properties and other property of a railroad
in concert with another state or states as is necessary to ensure
continued rail service in this state.

(4) Establish a state plan for rail transportation and local
rail services.

(5) Administer and coordinate such state plan.

(6) Provide in the state plan for the equitable distribution of
federal rail service continuation subsidies among state, local
and regional transportation authorities.

(7) Promote, supervise and support safe, adequate and
efficient rail services.

(8) Employ sufficiently trained and qualified personnel for
these purposes.
(9) Maintain adequate programs of investigation, research, promotion and development in connection with such purposes and to provide for public participation therein.

(10) Provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state necessary to assure proper disbursement of and accounting for federal funds paid to the state as rail service continuation subsidies.

(11) Comply with the regulations of the secretary of transportation of the United States department of transportation affecting federal rail service continuation programs.

(12) Do all things otherwise necessary to maximize federal assistance to the state under Title IV of the federal Regional Rail Reorganization Act of 1973, and to qualify for rail service continuation subsidies pursuant to the federal Regional Rail Reorganization Act of 1973.


(a) The authority may sell, transfer or lease all, or any part, of the rail properties and other property acquired under the provisions of this article to any responsible person, firm or corporation for continued operation of a railroad or other public purpose: Provided, That approval for the continued operation or other public purpose, is granted by the interstate commerce commission of the United States, whenever approval is required. The sale, transfer or lease shall be for a price and subject to any further terms and conditions which the authority feels are necessary and appropriate to effectuate the purposes of this article.

(b) After acquiring any railroad lines within the state, the authority shall assist any responsible person, firm or corporation to secure, as promptly as possible, any order or certificate required by the interstate commerce commission for the performance of railroad service. The authority shall also give any assurances or guarantees which are necessary or desirable to carry out the purposes of this article.
(c) The authority may take whatever steps are necessary in
order to determine the absolute fee simple title ownership of all
rail properties of any railroad within the state. The determina-
tion may include the status of the rail properties with respect to
easements, rights-of-way, leases, reversionary rights, fee simple
title ownership and any and all related title matters. The
authority may retain attorneys, experts or other assistants, and
issue any contracts as are necessary to make the title determina-
tion.

(d) All rail properties within the state offered for sale by
any railway corporation after the date of enactment of this
article shall be offered for sale to the state in the first instance.

(e) The authority may cooperate with other states in
connection with the purchase of any rail properties within this
state. The authority may also acquire railroad rights in other
states and rail properties lying in other states in order to carry
out the intentions and purposes of this article. In carrying out
the powers and duties conferred by this article, the authority
may enter into general contractual arrangements, including joint
purchasing and leasing of rail properties with other states.

(f) In weighing the varied interests of the residents of this
state, the authority shall give consideration to the individual
interest of any county or municipality expressing a desire to
acquire a portion, or all, of the abandoned real estate located
within its jurisdiction. The authority may exercise its powers
under this article to acquire the abandoned property for subse-
quent conveyance to the county or municipality.

(g) The authority may utilize federal funds, grants, gifts or
donations which are available and any sums that are appropri-
ated in carrying out the purposes of this article. The authority
may also apply for discretionary or other funds available under
the provisions of the federal Regional Rail Reorganization Act
of 1973 or other federal programs.

(h) The authority may apply for an acquisition and modern-
ization loan, or a guarantee of a loan, pursuant to Section 403
of the federal Regional Rail Reorganization Act of 1973, or any
other federal programs, within the limit of funds appropriated for those purposes.

(i) The authority is authorized to purchase any railroad rolling stock, equipment and machinery necessary for the operation and maintenance of any rail properties purchased by it on behalf of the state, with any funds made available for this purpose. The authority may also acquire and have available a pool of equipment and machinery which may be utilized by the operators of the rail properties for the purpose of track maintenance and other related railroad activities upon terms and conditions determined by the authority. Notwithstanding the provisions of sections forty-eight through fifty-three, article three, chapter five-a of this code to the contrary, the authority may enter into contracts or agreements for the lease or purchase and maintenance of any vehicles required for its purposes with the division of highways. For those purposes, the division of highways is authorized and empowered to enter into contracts or agreements for the lease or purchase and maintenance of any vehicles with the authority.

(j) The authority may contract for the rebuilding or relocation of any rail properties acquired pursuant to this article, within the provisions of the federal Regional Rail Reorganization Act of 1973, or any other applicable legislation. The authority may also spend any sums appropriated, as well as any other available funds, for the modernization, rebuilding and relocation of any rail properties owned by the state or by a private carrier. The authority may do any maintenance on any rail properties owned by the state as is necessary in the public interest.

(k) The authority may contract with any domestic or foreign person, firm, corporation, agency or government to provide, maintain or improve rail transportation service on the rail properties acquired by the state under this article.

(l) Whenever the authority determines that any rail properties acquired by the state are no longer needed for railroad purposes, it may, with the permission of the governor, perma-
nently or temporarily transfer the rail properties to any other state department or agency or political subdivision of the state, which shall utilize the properties for a public purpose. Whenever more than one department or agency or political subdivision wishes to utilize the property, the authority shall resolve such a conflict and make a prompt determination of the reasonable and proper order of priority, taking into consideration any applicable state plans, policies or objectives. If no state department or agency or political subdivision wants the properties, the authority may sell them, with the proceeds deposited to the special railroad fund established by this article. A public hearing is required prior to the transfer or sale of any rail properties by the authority.

CHAPTER 237

(H. B. 2791 — By Delegates Michael, Mezzatesta, Martin and Proudfoot)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority and organization of the state rail authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority; termination date.
The West Virginia railroad maintenance authority, heretofore created, is hereby continued and redesignated the West Virginia state rail authority. References in this code to the West Virginia railroad maintenance authority shall be understood and taken to mean the West Virginia state rail authority. Nothing in this article is intended to invalidate any action or obligation of the West Virginia railroad maintenance authority undertaken prior to the effective date of this article. The authority is a governmental instrumentality of the state and a body corporate.

The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties shall be deemed and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

The authority shall consist of seven members. The secretary of the department of transportation shall be chairman: Provided, That the secretary may appoint a designee to act in his or her stead at meetings of the authority. The other six members shall be appointed by the governor, by and with the advice and consent of the Senate, for a term of six years. Of the members of the authority first appointed, two shall be appointed for a term ending on the thirtieth day of June, one thousand nine hundred seventy-seven, two shall be appointed for a term ending two years thereafter and two shall be appointed for a term ending four years thereafter. A person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each authority member shall serve until the appointment and qualification of his successor. No more than three of the appointed authority members shall at any one time belong to the same political party. Appointed authority members may be reappointed to serve additional terms.

All members of the authority shall be citizens of the state. Each appointed member of the board, before entering upon his duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two, chapter six of this code. The governor may remove any authority
Annually the authority shall elect one of its members as vice chairman, and shall appoint a secretary-treasurer, who need not be a member of the authority. Four members of the authority shall constitute a quorum and the affirmative vote of four members shall be necessary for any action taken by vote of the authority. No vacancy in the membership of the authority shall impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the authority. The person appointed as secretary-treasurer, including an authority member if he is so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

The secretary of the department of transportation shall not receive any compensation for serving as the authority chairman. Each of the six appointed members of the authority shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or substantial portion thereof engaged in the discharge of official duties. All such compensation and expenses incurred shall be payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

There shall also be a director of the authority appointed by the authority, with the consent of the secretary.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia state rail authority shall continue to exist until the first day of July, two thousand.
AN ACT to amend and reenact section one, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the capitol building commission.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, chapter 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. CAPITOL BUILDING COMMISSION.

§ 4-8-1. Creation; composition; qualifications; continuation.

There is continued a capitol building commission, hereinafter referred to as the commission, which shall be composed of five members, who shall be appointed by the governor with the advice and consent of the Senate, plus the secretary of the department of administration who shall be a nonvoting member. No more than three members shall be of the same political party. One member shall be an architect selected from three persons recommended by the board of architects, one member shall be a registered professional engineer selected from three persons recommended by the board of engineers, one member shall be the commissioner of the division of culture and history, who is chairman of the commission, and two members shall be selected from the public at large.

Pursuant to the provisions of section four, article ten of this chapter, and following a preliminary performance audit review
conducted through the joint committee on government operations, the capitol building commission shall continue to exist until the first day of July, two thousand two.

CHAPTER 239

(H. B. 3035 — By Delegates Douglas, Collins, Prunty, H. White, Hatfield, Stainaker and Willison)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, four-a, five and five-a, article ten, chapter four 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 six-a, relating to providing for the deposition of property of a terminated agency and changing agency termination dates pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

That sections four, four-a, five and five-a, article ten, chapter four 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 six-a, all to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

§4-10-5. Termination of agencies following preliminary performance reviews.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-6a. Disposition of agency assets, equipment, and records after final termination.

§4-10-4. Termination of agencies following full performance evaluations.
The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a full performance evaluation has been conducted upon such agency:

(1) On the first day of July, two thousand: Division of corrections; division of environmental protection; workers' compensation; department of health and human resources; department of tax and revenue.

(2) On the first day of July, two thousand one: Division of natural resources; purchasing division within the department of administration; division of motor vehicles.

(3) On the first day of July, two thousand two: Division of highways; division of labor.

(4) On the first day of July, two thousand three: Division of culture and history; school building authority.

(5) On the first day of July, two thousand four: Division of personnel; division of rehabilitation services.

(6) On the first day of July, two thousand five: Parkways, economic development and tourism authority; tourism functions within the development office.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a full performance evaluation:

On the first day of July, two thousand: Office of judges of workers' compensation.

§4-10-5. Termination of agencies following preliminary performance reviews.
The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a preliminary performance review has been conducted upon such agency:

(1) On the first day of July, one thousand nine hundred ninety-six: Juvenile facilities review panel.

(2) On the first day of July, one thousand nine hundred ninety-seven: Public employees insurance agency advisory board; cable television advisory board.

(3) On the first day of July, one thousand nine hundred ninety-nine: Tree fruit industry self improvement assessment program.

(4) On the first day of July, two thousand: Family protection services board; environmental quality board; West Virginia’s membership in the Ohio River valley water sanitation commission; oil and gas inspector’s examining board; board of examiners in counseling; West Virginia state rail authority; state police; terms of family law masters and the family law master system; stream partners program within the division of natural resources; advisory council to the state medicaid agency; soil conservation committee of the department of agriculture; board of medicine.

(5) On the first day of July, two thousand one: Real estate commission; marketing and development division of the department of agriculture; board of architects; public employees insurance agency; public employees insurance agency finance board; center for professional development; rural health advisory panel; oil and gas conservation commission; state fire commission; office of water resources of the division of environmental protection; motorcycle safety and education committee.

(6) On the first day of July, two thousand two: Whitewater commission within the division of natural resources; state geological and economic survey; unemployment compensation; West Virginia contractor licensing board; women’s commis-
tion; parks section and parks functions of the division of natural
resources; ethics commission; veterans’ council; educational
broadcasting authority; board of respiratory care practitioners;
division of protective services; office of explosives and
blasting; office of coalfield community development.

(7) On the first day of July, two thousand three: Driver’s
licensing advisory board; West Virginia commission for
national and community service; West Virginia’s membership
in the southern regional education board.

(8) On the first day of July, two thousand four: Meat
inspection program of the department of agriculture; state board
of risk and insurance management; board of examiners of land
surveyors; interstate commission on uniform state laws; design-
build board; interstate commission on the Potomac River basin.

(9) On the first day of July, two thousand five: Board of
banking and financial institutions; board of social work
examiners; lending and credit rate board; governor’s cabinet on
children and families; health care authority; emergency medical
services advisory council.

§4-10-5a. Termination of agencies previously subject to prelimi-
nary performance reviews following compliance
monitoring and further inquiry updates.

The following agencies shall be terminated on the date
indicated, but no agency may be terminated under this section
unless a compliance monitoring and further inquiry update has
been completed on the agency subsequent to the prior comple-
tion of a preliminary performance review:

(1) On the first day of July, two thousand: Child support
enforcement division; state building commission; board of
examiners in speech pathology and audiology; public defender
services; racing commission; West Virginia commission for the
deaf and hard-of-hearing; office of environmental advocate of
the division of environmental protection; investment manage-
ment board.
(2) On the first day of July, two thousand one: State lottery commission; public service commission; human rights commission.

(3) On the first day of July, two thousand two: Capitol building commission.

§4-10-6a. Disposition of agency assets, equipment, and records after final termination.

Upon final termination pursuant to section six of this article and on or before the thirtieth day of June of the final year of the entity, the terminated entity shall file a report describing the disposition of assets and records with the secretary of the department of administration and the legislative auditor’s performance evaluation and research division. The legislative auditor’s performance evaluation and research division shall report to the joint committee on government operations the results of its review of the disposition of furniture, computers and other office equipment, program and personnel records and revenue of the agency. Furniture, computers and other office equipment of a terminated agency shall either be transferred to: (1) The secretary or commissioner of the department or bureau to which the agency is a part; or (2) the state agency for surplus property in the department of administration. All program and fiscal records shall be deposited with the division of administration and support services of the department of administration. The terminated agency’s personnel records shall be accepted and stored by the division of personnel, without regard to civil service coverage of the employees of the terminated agency.
AN ACT to amend and reenact section one, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the state building commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings; continuation.

"The state office building commission of West Virginia", hereto created, shall continue in existence, but on and after the ninth day of February, one thousand nine hundred sixty-six, shall be known and designated as "The state building commission of West Virginia" and shall continue as a body corporate and as an agency of the state of West Virginia. On and after the date aforesaid, the commission shall consist of the governor, attorney general, state treasurer and four additional members to be appointed by the governor by and with the advice and consent of the Senate. The terms of office for said members to be appointed by the governor shall be four years, except that the terms of office of the first four members so appointed by the governor shall be for one, two, three and four years, respectively. No more than three of such members so appointed by the governor shall be members of the same political party, nor shall any of said members be members or employees of the executive, legislative or judicial branches of government of West Virginia or any political subdivision thereof. The governor shall be chairman of the commission. The secretary of state shall be a member of the commission and serve as its secretary, but shall not have the right to vote upon matters before the commission. All members of the commission shall be citizens and residents of this state. The members of the commission shall be
paid or reimbursed for their necessary expenses incurred under this article, but shall receive no compensation for their services as members or officers of the commission: Provided, That each member of the commission appointed by the governor shall, in addition to such reimbursement for necessary expenses, receive an amount not to exceed the same compensation as is paid to members of the Legislature for their interim duties as recom-

mended by the citizens legislative compensation commission and authorized by law for each day or substantial portion thereof that he is engaged in the work of the commission. Such expenses and per diem shall be paid solely from funds provided under the authority of this article, and the commission shall not proceed to exercise or carry out any authority or power herein given it to bind said commission beyond the extent to which money has been provided under the authority of this article. On or before the fifteenth day of each month, the commission shall prepare and transmit to the president and minority leader of the Senate and the speaker and the minority leader of the House of Delegates a report covering the activities of the said commis-

sion for the preceding calendar month.

Pursuant to the provisions of article ten, chapter four of this code, the state building commission shall continue to exist until the first day of July, two thousand.

CHAPTER 241

(S. B. 363 — By Senators Bowman, Bailey, Ball, Jackson, Kessler, McCabe, Minard, Plymale, Redd, Snyder, Walker, Boley and Minear)

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, related to continuing the governor's cabinet on children and families.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. GOVERNOR'S CABINET ON CHILDREN AND FAMILIES.

§5-26-8. Termination date.

Pursuant to the provisions of article ten, chapter four of this code, the governor's cabinet on children and families shall continue to exist until the first day of July, two thousand five: Provided, That the cabinet shall prepare an annual progress report and shall present the report to the joint committee on government operations. The report shall detail the cabinet's compliance with its purposes, duties and responsibilities as set forth in sections one, three and four of this article, together with proposed plans for future compliance and proposed programs for the following year.

CHAPTER 242

(H. B. 2673 — By Delegates Douglas, Collins, Prunty, H. White, Hatfield and Stalnaker)

[Passed February 23, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the purchasing division within the department of administration.

Be it enacted by the Legislature of West Virginia:

That section one, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

There is hereby created the purchasing division of the department of administration for the purpose of establishing centralized offices to provide purchasing, travel and leasing services to the various state agencies.

No person shall be appointed director of the purchasing division unless that person is, at the time of appointment, a graduate of an accredited college or university and shall have spent a minimum of ten of the fifteen years immediately preceding his or her appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise.

The provisions of this article shall apply to all of the spending units of state government, except as is otherwise provided by this article or by law: Provided, That the provisions of this article shall not apply to the legislative branch unless otherwise provided or the Legislature or either house thereof requests the director to render specific services under the provisions of this chapter, nor to purchases of stock made by the alcohol beverage control commissioner, nor to purchases of textbooks for the state board of education.

Pursuant to the provisions of article ten, chapter four of this code, the purchasing division within the department of administration shall continue to exist until the first day of July, two thousand one.

CHAPTER 243

(S. B. 185 — By Senators Balley, Bowman, Ball, Jackson, Kessler, McCabe, Minard, Redd, Schoonover, Snyder, Walker, Wooton and Boley)

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section thirteen, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the tourism commission under the West Virginia development office.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-13. Continuation.

1 Pursuant to the provisions of chapter four, article ten of this code, the tourism commission shall continue to exist until the first day of July, two thousand five.

CHAPTER 244

(S. B. 514 — By Senators Bowman, Bailey, Ball, Kessler, McCabe, Minard, Redd, Wooton, Boley and Minear)

[Passed March 1, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of health and human resources; and providing for the continuation of the divisions of human services and its statutory functions within the department.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SER-
§9-2-1a. Department of welfare renamed division of human services; continuation of the department of health and human resources and the division of human services.

The state department of welfare, created pursuant to the provisions of chapter nine of this code, is hereby continued as an official department of the state of West Virginia, but effective the twenty-ninth day of May, one thousand nine hundred eighty-three, its name shall be the division of human services. All references in the code to the department of welfare shall mean the division of human services, and all references to the commissioner of the division of human services and for all other legal purposes the department of welfare shall continue as the division of human services.

The department of health and human resources and the division of human services within that department shall be charged with the administration of this chapter. The department of health and human resources shall continue to exist and the division of human services shall continue to exist within the department of health and human resources until the first day of July, two thousand, to permit a review of their functions to be undertaken by the joint committee on government operations as part of the full performance evaluation of the department of health and human resources scheduled to continue during the interim of the Legislature in the year two thousand.
AN ACT to amend and reenact section twenty, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia investment management board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-20. Termination of board.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia investment management board shall continue to exist until the first day of July, two thousand.

CHAPTER 246

(H. B. 2713 — By Delegates Douglas, Collins, Prunty, H. White, Hatfield, Willison and Stalnaker)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-2. Superintendent; departmental headquarters; continuation of the state police.
The department of public safety, heretofore established, shall be continued and hereafter shall be known as the West Virginia state police. Wherever the words “department of public safety” or “division of public safety” appear in this code, they shall mean the West Virginia state police. The governor shall nominate, and by and with the advice and consent of the Senate, appoint a superintendent to be the executive and administrative head of the department. Notwithstanding any provision of this code to the contrary, the superintendent shall be paid an annual salary of sixty thousand dollars. The superintendent shall hold the rank of colonel and is entitled to all rights, benefits and privileges of regularly enlisted members. On the date of his or her appointment, the superintendent shall be at least thirty years of age. Before entering upon the discharge of the duties of his or her office, he or she shall execute a bond in the penalty of ten thousand dollars, payable to the state of West Virginia and conditioned upon the faithful performance of his or her duties. Such bond both as to form and security shall be approved as to form by the attorney general, and to sufficiency by the governor.

Before entering upon the duties of his or her office the superintendent shall subscribe to the oath hereinafter provided. The headquarters of the department shall be located in Kanawha County.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia state police shall continue to exist until the first day of July, two thousand.

CHAPTER 247

(S. B. 361 — By Senators Bowman, Bailey, Ball, Jackson, Kessler, McCabe, Minard, Plymale, Redd, Snyder, Walker, Boley and Minear)

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section five, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the emergency medical services advisory council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses; continuation.

The emergency medical services advisory council, heretofore created and established by former section seven of this article, shall be continued for the purpose of developing, with the commissioner, standards for emergency medical service personnel and for the purpose of providing advice to the office of emergency medical services and the commissioner with respect to reviewing and making recommendations for, and providing assistance to, the establishment and maintenance of adequate emergency medical services for all portions of this state.

The council shall have the duty to advise the commissioner in all matters pertaining to his or her duties and functions in relation to carrying out the purposes of this article.

The council shall be composed of fifteen members appointed by the governor by and with the advice and consent of the Senate. The mountain state emergency medical services association shall submit to the governor a list of six names of representatives from their association and a list of three names shall be submitted to the governor of representatives of their respective organizations by the county commissioners’ association of West Virginia, the West Virginia state firemen’s association, the West Virginia hospital association, the West
Virginia chapter of the American college of emergency physicians, the West Virginia emergency medical services administrators association, the West Virginia emergency medical services coalition, the ambulance association of West Virginia and the state department of education. The governor shall appoint from the respective lists submitted, two persons who represent the mountain state emergency medical services association, one of whom shall be a paramedic and one of whom shall be an emergency medical technician-basic, and one person from the county commissioners’ association of West Virginia, the West Virginia state firemen’s association, the West Virginia hospital association, the West Virginia chapter of the American college of emergency physicians, the West Virginia emergency medical services administrators association, the West Virginia emergency medical services coalition, the ambulance association of West Virginia and the state department of education. In addition the governor shall appoint one person to represent emergency medical service providers operating within the state, one person to represent small emergency medical service providers operating within this state and three persons to represent the general public. Not more than six of the members may be appointed from any one congressional district.

The current advisory council members’ terms shall end on the thirtieth day of June, one thousand nine hundred ninety-six and, pursuant to the provisions of this section, the governor shall appoint an advisory council on the first day of July, one thousand nine hundred ninety-six. Of those first appointed, one-third shall serve for one year, one-third shall serve for two years and one-third shall serve for three years. Each subsequent term is to be for three years and no member may serve more than four consecutive terms.

The council shall choose its own chairman and meet at the call of the commissioner at least twice a year.

The members of the council shall receive compensation and expense reimbursement in an amount not to exceed the same compensation and expense reimbursement as is paid to mem-
bers of the Legislature for their interim duties as recommended
by the citizens legislative compensation commission and
authorized by law, for each day or substantial portion thereof
engaged in the performance of official duties.

Pursuant to the provisions of article ten, chapter four of this
code, the emergency medical services advisory council shall
continue to exist until the first day of July, two thousand five.

CHAPTER 248
(S. B. 515 — By Senators Bowman, Bailey, Ball, Kessler,
McCabe, Minard, Redd, Wooton, Boley and Minear)

[Passed March 1, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article twenty­
nine-b, chapter sixteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to continuing the
health care authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-28. Termination date.

1 Pursuant to the provisions of section four, article ten,
2 chapter four of this code, the health care authority shall
3 continue to exist until the first day of July, two thousand five,
4 to allow for a completion of an audit by the joint committee on
5 government operations.
AN ACT to amend and reenact section three, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia parkways, economic development and tourism authority.

Be it enacted by the Legislature of West Virginia:

That section three, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

§17-16A-3. Dissolution and termination of West Virginia turnpike commission; West Virginia parkways, economic development and tourism authority generally.

On and after the first day of June, one thousand nine hundred eighty-nine, the West Virginia turnpike commission is hereby abolished in all respects, and there is hereby created the “West Virginia Parkways, Economic Development and Tourism Authority”, and by that name the parkways authority may sue and be sued and plead and be impleaded. The parkways authority is hereby constituted an agency of the state, and the exercise by the parkways authority of the powers conferred by this article in the construction, reconstruction, improvement, operation and maintenance of parkway, economic development and tourism projects shall be deemed and held to be an essential governmental function of the state.
The West Virginia parkways, economic development and tourism authority shall consist of seven members, including the transportation secretary, who shall serve as chairman of the parkways authority, and six members, including no less than one from each of the counties which have land bordering parkway projects, appointed by the governor, by and with the advice and consent of the Senate. The appointed members shall be residents of the state and shall have been qualified electors therein for a period of at least one year next preceding their appointment. Upon the effective date of this legislation, the governor shall forthwith appoint six members of the parkways authority for staggered terms. The terms of the parkways authority members first taking office on or after the effective date of this legislation shall expire as designated by the governor at the time of the nomination, one at the end of the first year, one at the end of the second year, one at the end of the third year, one at the end of the fifth year, one at the end of the sixth year and one at the end of the seventh year, after the first day of June, one thousand nine hundred eighty-nine. As these original appointments expire, each subsequent appointment shall be for a full eight-year term. 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 shall be eligible for reappointment. The term of any person serving as a member of the West Virginia turnpike commission immediately preceding the effective date of this legislation shall cease and otherwise expire upon such effective date: Provided, That any such member shall be eligible for reappointment. Each appointed member of the parkways authority before entering upon his duties shall take an oath as provided by section five, article IV of the constitution of the state of West Virginia.

The parkways authority shall elect one of the appointed members as vice chairman, and shall also elect a secretary and treasurer who need not be members of the parkways authority. Four members of the parkways authority shall constitute a quorum and the vote of a majority of members present shall be
necessary for any action taken by the parkways authority. No
vacancy in the membership of the parkways authority shall
impair the right of a quorum to exercise all the rights and
perform all the duties of the parkways authority. The parkways
authority shall meet at least monthly and either the chairman or
any four members shall be empowered to call special meetings
for any purpose or purposes: Provided, That notice of any such
meeting shall be given to all members of the parkways authority
not less than ten days prior to said special meetings.

Before the issuance of any parkway revenue bonds or
revenue refunding bonds under the provisions of this article,
each appointed member of the parkways authority shall execute
a surety bond in the penal sum of twenty-five thousand dollars
and the secretary and treasurer shall execute a surety bond in
the penal sum of fifty thousand dollars, each such surety bond
to be conditioned upon the faithful performance of the duties of
his or her office, to be executed by a surety company authorized
to transact business in the state of West Virginia as surety and
to be approved by the governor and filed in the office of the
secretary of state.

The members of the parkways authority shall not be entitled
to compensation for their services, but each member shall be
reimbursed for his or her actual expenses necessarily incurred
in the performance of his or her duties. All expenses incurred
in carrying out the provisions of this article shall be payable
solely from funds provided under the authority of this article
and no liability or obligation shall be incurred by the parkways
authority hereunder beyond the extent to which moneys shall
have been provided under the authority of this article.

Pursuant to the provisions of article ten, chapter four of this
code, the West Virginia parkways, economic development and
tourism authority shall continue to exist until the first day of
July, two thousand five.
AN ACT to amend and reenact section ten, article two-g, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terminating the tree fruit industry self-improvement assessment board.

Be it enacted by the Legislature of West Virginia:

That section ten, article two-g, 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 2G. TREE FRUIT INDUSTRY SELF-IMPROVEMENT BOARD.
§19-2G-10. Termination of program.

Pursuant to the provisions of article ten, chapter four of this code, and following a preliminary performance review conducted through the joint committee on government operations, the tree fruit industry self-improvement assessment board shall terminate the first day of July, one thousand nine hundred ninety-nine. After the termination date, the board shall have the powers and authority set forth in section six, article ten, chapter four of this code until the first day of July, two thousand.
AN ACT to amend and reenact section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the state soil conservation committee.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

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

(a) The state soil conservation committee is continued. It is to serve as an agency of the state and to perform the functions conferred upon it in this article. The committee shall consist of seven members. The following shall serve, ex officio, as members of the committee: The director of the state cooperative extension service; the director of the state agricultural experiment station; the director of the division of environmental protection; and the state commissioner of agriculture, who shall be chairman of the committee.

The governor shall appoint as additional members of the committee three representative citizens. The term of members thus appointed shall be four years, except that of the first members so appointed, one shall be appointed for a term of two years, one for a term of three years and one for a term of four years. In the event of a vacancy, appointment shall be for the unexpired term.

The committee may invite the secretary of agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings and promulgate such rules as may be necessary for the execution of its functions under this article.

(b) The state soil conservation committee may employ an administrative officer and such technical experts and such other
agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. The committee is empowered to secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee, members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys or studies as the committee may request.

(c) A member of the committee shall hold office so long as he or she shall retain the office by virtue of which he or she shall be serving on the committee. A majority of the committee shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee but shall be entitled to expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

(d) In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided
hereinafter, in the carrying out of any of their powers and programs;

(2) To keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them;

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state, in the work of such districts;

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable;

(6) To accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise, from the United States or any of its agencies, from the state of West Virginia or from other sources, and to use or expend such money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate such money, services or materials in part to the various soil conservation districts created by this article in order to assist them in carrying on their operations; and

(7) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, operate and improve any properties acquired, to receive and retain income from such property and to expend such income as required for operation, maintenance, administration or improvement of such properties or in otherwise carrying out the purposes and provisions of this article;
and to sell, lease or otherwise dispose of any of its property or
interests therein in furtherance of the purposes and the provi-
sions of this article. Money received from the sale of land
acquired in the small watershed program shall be deposited in
the special account of the state soil conservation committee and
expended as herein provided.

After having conducted a performance audit through its
joint committee on government operations, pursuant to article
ten, chapter four of this code, the Legislature hereby finds and
declares that the state soil conservation committee should be
continued and reestablished. Accordingly, pursuant to the
provisions of section five of said article, the state soil conserva-
tion committee shall continue to exist until the first day of July,
two thousand.

CHAPTER 252

(S. B. 438 — By Senators Bowman, Bailey, Ball, Kessler, McCabe,
Minard, Plymale, Redd, Snyder, Wooton and Boley)

[Passed February 26, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article twenty-three,
chapter nineteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing the racing
commission.

Be it enacted by the Legislature of West Virginia:

That section thirty, article twenty-three, 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 23. HORSE AND DOG RACING.

§19-23-30. Termination of the racing commission.

Pursuant to the provisions of article ten, chapter four of this
code, the racing commission shall continue to exist until the
first day of July, two thousand.
CHAPTER 253

(H.B. 2610 — By Delegates Douglas, Collins, Prunty, H. White, Hatfield, Flanigan and Stainaker)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the parks section and the parks functions of the division of natural resources.

Be it enacted by the Legislature of West Virginia:

That section three, article one, 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 1. ORGANIZATION AND ADMINISTRATION.

§20-1-3. Division of natural resources, office of director and commission established; termination date for division of natural resources and for parks section of division of natural resources.

A division of natural resources, the office of director of the division of natural resources and a natural resources commission are hereby created and established in the state government with jurisdiction, powers, functions, services and enforcement processes as provided in this chapter and elsewhere by law.

Pursuant to the provisions of article ten, chapter four of this code, the division of natural resources shall continue to exist until the first day of July, two thousand one.

Pursuant to the provisions of article ten, chapter four of this code, the parks section and parks functions of the division of
natural resources, transferred to the division of natural
resources pursuant to the provisions of section twelve, article
one, chapter five-b of this code, shall continue to exist within
the division of natural resources until the first day of July, two
thousand two.

CHAPTER 254

(H. B. 2733 — By Delegates Douglas, Collins, Prunty,
H. White, Hatfield, Kuhn and Stalnaker)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter
twenty-one-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing the
authority of the commissioner of the bureau of employment
programs to administer unemployment compensation.

Be it enacted by the Legislature of West Virginia:

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

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

§21A-2-9. Continuation of authority of commissioner to adminis-
ter unemployment compensation.

Pursuant to the provisions of article ten, chapter four of this
code, the commissioner shall continue to administer this chapter
until the first day of July, two thousand two, to allow for the
completion of a preliminary performance review by the joint
committee on government operations.
AN ACT to amend and reenact section seven, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the office of water resources within the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

*§22-1-7. Offices within division; continuation of the office of water resources.

Consistent with the provisions of this article the director shall, at a minimum, maintain the following offices within the division:

(1) The office of abandoned mine lands and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article two of this chapter;

(2) The office of mining and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles three and four of this chapter;

(3) The office of air quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article five of this chapter;

*Clerk's Note: This section was also amended by SB 681 (Chapter 120), which passed subsequent to this act.
(4) The office of oil and gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles six, seven, eight, nine and ten of this chapter;

(5) The office of water resources, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles eleven, twelve, thirteen and fourteen of this chapter; and

(6) The office of waste management, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter.

Pursuant to the provisions of article ten, chapter four of this code, the office of water resources within the division of environmental protection shall continue to exist until the first day of July, two thousand one.

CHAPTER 256

(H. B. 2675 — By Delegates Douglas, Collins, Prunty, H. White, Hatfield, Manchin and McGraw)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, relating to the continuation of the office of the environmental advocate of the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 20. ENVIRONMENTAL ADVOCATE.

§22-20-1. Appointment of environmental advocate; powers and duties; salary; continuation of position.

1 The director of the division of environmental protection shall appoint a person to serve as the environmental advocate within the division of environmental protection, and shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code governing and controlling the qualifications, powers and duties of the person to be appointed to the position of environmental advocate. The environmental advocate shall serve at the will and pleasure of the director, who shall also set the salary of the environmental advocate. All funding for the office of environmental advocate shall be from existing funds of the division of environmental protection. The director shall provide an office and secretarial and support staff as needed. The position of environmental advocate shall continue to exist until the first day of July, two thousand, pursuant to article ten, chapter four of this code.

CHAPTER 257

(H. B. 2674 — By Delegates Douglas, Collins, Prunty, H. White, Hatfield and Stainaker)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the office of judges of the workers’ compensation system.

Be it enacted by the Legislature of West Virginia:

That section eight, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 5. REVIEW.

§23-5-8. Continuation of office of administrative law judges; powers of chief administrative law judge and said office.

(a) The workers' compensation office of administrative law judges previously created pursuant to chapter twelve, acts of the Legislature, one thousand nine hundred ninety, second extraordinary session, is hereby continued and designated to be an integral part of the workers' compensation system of this state. The office of judges shall be under the supervision of a chief administrative law judge who shall be appointed by the governor, with the advice and consent of the Senate. The previously appointed incumbent of that position who was serving on the second day of February, one thousand nine hundred ninety-five, shall continue to serve in that capacity unless subsequently removed as provided for in subsection (b) of this section.

(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge's salary shall be set by the compensation programs performance council created in section one, article three, chapter twenty-one-a of this code. Said salary shall be within the salary range for comparable chief administrative law judges as determined by the state personnel board created by section six, article six, chapter twenty-nine of this code. The chief administrative law judge may only be removed by a vote of two thirds of the members of the compensation programs performance council and shall not be removed except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance and then only after he or she has been presented in writing with the reasons for his or her removal and is given opportunity to respond and to present evidence. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of any appointed official or employee shall be applicable to the chief administrative law judge.
(c) By and with the consent of the commissioner, the chief administrative law judge shall employ administrative law judges and other personnel as are necessary for the proper conduct of a system of administrative review of orders issued by the workers' compensation division which orders have been objected to by a party, and all such employees shall be in the classified service of the state. Qualifications, compensation and personnel practice relating to the employees of the office of judges, other than the chief administrative law judge, shall be governed by the provisions of the statutes, rules and regulations of the classified service pursuant to article six, chapter twenty-nine of this code. All such additional administrative law judges shall be persons who have been admitted to the practice of law in this state and shall also have had at least two years of experience as an attorney. The chief administrative law judge shall supervise the other administrative law judges and other personnel which collectively shall be referred to in this chapter as the office of judges.

(d) The administrative expense of the office of judges shall be included within the annual budget of the workers' compensation division.

(e) Subject to the approval of the compensation programs performance council pursuant to subdivisions (b) and (c), section seven, article three, chapter twenty-one-a of this code, the office of judges shall from time to time promulgate rules of practice and procedure for the hearing and determination of all objections to findings or orders of the workers' compensation division pursuant to section one of this article. The office of judges shall not have the power to initiate or to promulgate legislative rules as that phrase is defined in article three, chapter twenty-nine-a of this code.

(f) The chief administrative law judge shall continue to have the power to hear and determine all disputed claims in accordance with the provisions of this article, establish a procedure for the hearing of disputed claims, take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep such records and make such reports as are
necessary for disputed claims, and exercise such additional
powers, including the delegation of such powers to administra-
tive law judges or hearing examiners as may be necessary for
the proper conduct of a system of administrative review of
disputed claims. The chief administrative law judge shall make
such reports as may be requested of him or her by the compensa-
tion programs performance council.

(g) Pursuant to the provisions of article ten, chapter four of
this code, the office of judges shall continue to exist until the
first day of July, two thousand.

CHAPTER 258

(S. B. 359 — By Senators Bowman, Bailey, Ball, Jackson, Kessler, McCabe,
Minard, Plymale, Redd, Snyder, Walker, Boley and Minear)

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter
twenty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing the public
service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

*§24-1-3. Commission continued; membership; chairman;
compensation.

(a) The public service commission of West Virginia,
heretofore established, is continued and directed as provided by
this chapter, chapter twenty-four-a and chapter twenty-four-b
of this code. After having conducted a performance audit
through its joint committee on government operations, pursuant

* Clerk's Note: This section was also amended by HB 2453 (Chapter 224), which
passed subsequent to this act.
to section nine, article ten, chapter four of this code, the
Legislature hereby finds and declares that the public service
commission should be continued and reestablished. Accord-
ingly, notwithstanding the provisions of section four, article ten,
chapter four of this code, the public service commission shall
continue to exist until the first day of July, two thousand one.
The public service commission may sue and be sued by that
name. The public service commission shall consist of three
members who shall be appointed by the governor with the
advice and consent of the Senate. The commissioners shall be
citizens and residents of this state and at least one of them shall
be duly licensed to practice law in West Virginia, with not less
than ten years' actual work experience in the legal profession
as a member of a state bar. No more than two of the commis-
sioners shall be members of the same political party. Each
commissioner 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 this state. The oath shall be
filed in the office of the secretary of state. The governor shall
designate one of the commissioners to serve as chairman at the
governor’s will and pleasure. The chairman shall be the chief
administrative officer of the commission. The governor may
remove any commissioner only for incompetency, neglect of
duty, gross immorality, malfeasance in office or violation of
subsection (c) of this section.

(b) The unexpired terms of members of the public service
commission at the time this subsection becomes effective are
continued. Upon expiration of the terms, appointments are for
terms of six years, except that an appointment to fill a vacancy
is for the unexpired term only. The commissioners whose terms
are terminated by the provisions of this subsection are eligible
for reappointment.

(c) No person while in the employ of, or holding any
official relation to, any public utility subject to the provisions
of this chapter, or holding any stocks or bonds of a public utility
subject to the provisions of this chapter, or who is pecuniarily
interested in a public utility subject to the provisions of this
chapter, may serve as a member of the commission or as an
employee of the commission. Nor may any commissioner be a
candidate for or hold public office, or be a member of any
political committee, while acting as a commissioner; nor may
any commissioner or employee of the commission receive any
pass, free transportation or other thing of value, either directly
or indirectly, from any public utility or motor carrier subject to
the provisions of this chapter. In case any of the commissioners
becomes a candidate for any public office or a member of any
political committee, the governor shall remove him or her from
office and shall appoint a new commissioner to fill the vacancy
created.

(d) The salaries of members of the public service commis-
sion and the manner in which they are paid established by the
prior enactment of this section are continued. Effective the first
day of July, one thousand nine hundred ninety-six, and in light
of the assignment of new, substantial additional duties embrac-
ing new areas and fields of activity under certain legislative
enactments, each commissioner shall receive an annual salary
of sixty-five thousand dollars to be paid in monthly installments
from the special funds in the amounts that follow:

(1) From the public service commission fund collected
under the provisions of section six, article three of this chapter,
fifty-two thousand dollars;

(2) From the public service commission motor carrier fund
collected under the provisions of section six, article six, chapter
twenty-four-a of this code, ten thousand eight hundred fifty
doctors; and

(3) From the public service commission gas pipeline safety
fund collected under the provisions of section three, article five,
chapter twenty-four-b of this code, two thousand one hundred
d fifty dollars.

In addition to this salary provided for all commissioners,
the chairman of the commission shall receive five thousand
dollars per annum to be paid in monthly installments from the
public service commission fund collected under the provisions
of section six, article three of this chapter on and after the first
day of July, one thousand nine hundred ninety-six.
CHAPTER 259

(H. B. 2676 — By Delegates Douglas, Collins, Prunty, Hatfield, H. White, Marshall and Azinger)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the West Virginia women’s commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WOMEN’S COMMISSION.

§29-20-1. Continuation; membership; appointment and terms of members; organization; reimbursement for expenses.

The West Virginia commission on the status of women is hereby abolished, and there is hereby continued within the department of health and human resources the West Virginia women’s commission, to consist of eighteen members, seven of whom shall be ex officio members, not entitled to vote: The attorney general, the state superintendent of schools, the commissioner of labor, the commissioner of the bureau of human resources of the department of health and human resources, the director of the human rights commission, the director of the division of personnel and the chancellor of the board of directors of the state college system. Each ex officio
member may designate one representative employed by his or her department to meet with the commission in his or her absence. The governor shall appoint the additional eleven members, by and with the advice and consent of the Senate, from among the citizens of the state. The governor shall designate the chairman and vice chairman of the commission and the commission may elect such other officers as it deems necessary. The members shall serve a term beginning the first day of July, one thousand nine hundred seventy-seven, three to serve for a term of one year, four to serve for a term of two years and the remaining four to serve for a term of three years. The successors of the members initially appointed as provided herein shall be appointed for a term of three years each in the same manner as the members initially appointed under this article, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Each member shall serve until the appointment and qualification of his or her successor.

No member may receive any salary for his or her services, but each may be reimbursed for actual and necessary expenses incurred in the performance of his or her duties out of funds received by the commission under section four of this article, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the commission.

After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the West Virginia women's commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the West Virginia women's commission shall continue to exist until the first day of July, two thousand two.
CHAPTER 260

(S. B. 437 — By Senators Bowman, Bailey, Ball, Kessler, McCabe, Minard, Plymale, Redd, Snyder, Wooton and Boley)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing public defender services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-3. Establishment of public defender services, termination date.

1 There is hereby created an executive agency known as public defender services. The agency shall administer, coordinate and evaluate programs by which the state provides legal representation to indigent persons, monitor the progress of various delivery systems and recommend improvements. The agency shall maintain its office at the state capitol.

2 Pursuant to the provisions of article ten, chapter four of this code, public defender services shall continue to exist until the first day of July, two thousand.
CHAPTER 261

(H. B. 2479 — By Delegates Douglas, Collins, Prunty, H. White, Hatfield and Stainaker)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of social work examiners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 30. SOCIAL WORKERS.

§30-30-3. Board of social work examiners.

(a) For the purpose of carrying out the provisions of this article, there is hereby created a West Virginia board of social work examiners, consisting of seven members who shall be appointed by the governor, subject to the following requirements:

(1) No person may be excluded from serving on the board by reason of race, sex or national origin;

(2) One member shall be an independent clinical social worker, two members shall be certified social workers, one member shall be a graduate social worker and two members shall be social workers. All such members must be licensed under the provisions of this article in accordance with their respective titles. In addition, there shall be one member of the board chosen from the general public: Provided, That those members who are appointed by the governor to serve as the first
board after the effective date of this article shall be persons eligible for the licensing required under this article: *Provided, however,* That the member from the general public shall never be required to be eligible for licensing;

(3) The members of the first board to serve after the effective date of this article shall be appointed within ninety days thereof;

(4) The term of office for each member of the board shall be three years: *Provided,* That one of the members of the first board to serve after the effective date of this article shall serve a term of two years, three of them shall serve a term of three years and the remaining three shall serve a term of four years;

and

(5) The governor shall, whenever there is a vacancy on the board due to circumstances other than the expiration of the term of a member, appoint another member with the same qualifications as the member who has vacated to serve the duration of the unexpired term.

For the purpose of accepting nominations for the replacement of a member, the governor shall cause a notice of the vacancy to be published at least thirty days prior to an announcement of the replacement member, as a Class I-0 legal advertisement, in accordance with the provisions of section two, article three, chapter fifty-nine of this code. The publication area shall be statewide.

If the governor fails to make appointment in ninety days after expiration of any term, the board shall make the necessary appointment. Each member shall hold office until the expiration of the term for which such member is appointed and until a successor shall have been duly appointed and qualified.

(b) Any members of the board may be removed from office for cause, in accordance with procedures set forth in this code for the removal of public officials from office.

(c) The board shall pay each member the same compensation as is paid to members of the Legislature for their interim
duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties and shall reimburse each member for actual and necessary expenses incurred in the discharge of official duties: Provided, That such compensation and such expenses shall not exceed the amount received by the board from licensing fees and penalties imposed under subdivision (4), subsection (e) of this section.

(d) The board shall hold an annual election for the purpose of electing a chairman, vice chairman and secretary. The requirements for meetings and management of the board shall be established in regulations promulgated by the board as required by this article.

(e) In addition to the duties set forth in other provisions of this article, the board shall:

(1) Recommend to the Legislature any proposed modifications to this article;

(2) Report to county prosecutors any suspected violations of this article: Provided, That no report shall be made until the board has given the suspected violator ninety days written notice of the suspected violation and the violator has, within such ninety-day period, been afforded an opportunity to respond to the board with respect to the allegation;

(3) Publish an annual report and a roster listing the names and addresses of all persons who have been licensed in accordance with the provisions of this article as an independent clinical social worker, certified social worker, graduate social worker or social worker;

(4) Establish a fee schedule by legislative rule, pursuant to the provisions of chapter twenty-nine-a of this code, which schedule may include fees for the initial examination, license fee, license renewal, license replacement, reciprocal license, license classification change, continuing education provider approval and monitoring, mailing lists and requests for information and reports; fees for requests for information and reports shall not be greater than the cost of personnel, time and supplies
incurred by the board and shall not be applied to the annual report;

(5) Establish standards and requirements by legislative rule, pursuant to the provisions of chapter twenty-nine-a of this code, for continuing education. In establishing these requirements the board shall consult with professional groups and organizations representing all levels of practice provided for in this article and the board shall consider recognized staff development programs, continuing education programs offered by colleges and universities having social work programs approved or accredited by the council on social work education, and continuing education programs offered by recognized state and national social work bodies: Provided, That such standards and requirements for continuing education shall not be construed to alter or affect in any way the standards and requirements for licensing as set forth elsewhere in this article;

(6) Establish standards and requirements for the practice of social work and the differentiation of qualifications, education, training, experience, supervision, responsibilities, rights, duties and privileges at the independent clinical social worker, certified social worker, graduate social worker and social worker license levels. In establishing these standards and requirements the board shall consult with professional groups and organizations representing all levels of practice provided for in this article. Standards and requirements may include, but are not limited to, practice standards, practice parameters, quality indicators, minimal standards of acceptance, advanced training and certification and continuing education: Provided, That such standards and requirements for practice may not be construed to alter or affect in any way the standards and requirements for licensing as set forth elsewhere in this article;

(7) Conduct its proceedings in accordance with provisions of article nine-a, chapter six of this code; and

(8) Employ, direct and define the duties of administrative clerical support staff.

After having conducted a preliminary performance review through its joint committee on government operations, pursuant
to article ten, chapter four of this code, the Legislature hereby
finds and declares that the board of social work examiners be
continued and reestablished. Accordingly, notwithstanding the
provisions of said article, the board of social work examiners
shall continue to exist until the first day of July, two thousand
five.

CHAPTER 262

(S. B. 362 — By Senators Bowman, Bailey, Ball, Jackson, Kessler, McCabe,
Minard, Plymale, Redd, Snyder, Walker, Boley and Minear)

[Passed February 26, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article thirty-two,
chapter thirty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing the board
of examiners in speech-language pathology and audiology.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.


1 The West Virginia board of examiners for speech-language
2 pathology and audiology shall be terminated pursuant to the
3 provisions of article ten, chapter four of this code on the first
4 day of July, two thousand, unless sooner terminated or unless
5 continued or reestablished pursuant to that article.
AN ACT to amend and reenact section one, article one, chapter forty-seven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia lending and credit rate board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-1. Legislative findings; creation, membership, powers and duties of board; termination of board.

(a) The Legislature hereby finds and declares that:

1 (1) Changes in the permissible charges on loans, credit sales or transactions, forbearance or other similar transactions requires specialized knowledge of the needs of the citizens of West Virginia for credit for personal and commercial purposes and knowledge of the availability of such credit at reasonable rates to the citizens of this state while affording a competitive return to persons extending such credit;

2 (2) Maximum charges on loans, credit sales or transactions, forbearance or other similar transactions executed in this state should be prescribed from time to time to reflect changed economic conditions, current interest rates and finance charges throughout the United States and the availability of credit within the state in order to promote the making of such loans in this state; and
(3) The prescribing of such maximum interest rates and finance charges can be accomplished most effectively and flexibly by a board comprised of the heads of designated government agencies, university schools of business and administration and members of the public.

(b) In view of the foregoing findings, it is the purpose of this section to establish the West Virginia lending and credit rate board and authorize said board to prescribe semiannually the maximum interest rates and finance charges on loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders, sellers and other creditors to charge up to the maximum interest rates or finance charges so fixed. The rates prescribed by the board or rates set by the board or any other rate or rates which the creditor is permitted to charge under any other provision of this code.

(c) The West Virginia lending and credit rate board shall be comprised of:

(1) The director of the governor's office of economic and community development;

(2) The West Virginia state treasurer;

(3) The West Virginia banking commissioner;

(4) The deans of the schools of business and administration at Marshall University and West Virginia University;

(5) The director of the division of consumer protection of the attorney general's office; and

(6) Three members of the public appointed by the governor with the advice and consent of the Senate. The members of the public shall be appointed for terms of six years each, and until their successors are appointed and qualified; except that of the members first appointed, one shall be appointed for a term of two years, one for a term of four years and one for a term of six years. A member who has served one full term of six years shall
be ineligible for appointment for the next succeeding term. Vacancies shall be filled by appointment of the governor with the advice and consent of the Senate, or if any vacancy remains unfilled for three months, by a majority vote of the board. The West Virginia banking commissioner shall serve as chairperson of the board and the rate or rates set by the board shall be determined by a majority vote of those members of the board in attendance at the respective board meeting.

(d) The West Virginia lending and credit rate board is hereby authorized and directed to meet after the thirty-first day of December, one thousand nine hundred eighty-three, on the first Tuesday of April and on the first Tuesday of October of each year or more or less frequently as required by the circumstances and to prescribe by order a maximum rate of interest and finance charge for the next succeeding six months, effective on the first day of June and on the first day of December, for any loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section. In fixing said maximum rates of interest and finance charge, the board shall take into consideration prevailing economic conditions, including the monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional commercial short-term loans and notes throughout West Virginia and throughout the United States and on corporate interest-bearing securities of high quality, the availability of credit at reasonable rates to the citizens of this state which afford a competitive return to persons extending such credit and such other factors as the board may determine.

(e) Any petition proposing a change in the prescribed maximum rates of interest and finance charges must be filed in the office of the banking commissioner no later than the fifteenth day of February in order to be voted on at the board meeting on the first Tuesday of April and no later than the fifteenth day of August in order to be voted on at the board meeting on the first Tuesday of October. Whenever any change in the prescribed maximum rates of interest and finance charges is proposed the board shall schedule a hearing, at least fifteen days prior to the board meeting at which the proposed rates of interest and finance charge will be voted on by the members of
the board, and shall give all interested parties the opportunity to
testify and to submit information at such public hearing that is
relevant. Notice of the scheduled public hearing shall be issued
and disseminated to the public at least twenty days prior to the
scheduled date of the hearing.

(f) The board shall prescribe by order issued not later than
the twentieth day of April and not later than the twentieth day
of October, in accordance with the provisions of subsection (d)
of this section the maximum rates of interest and finance charge
for the next succeeding six months for any loan, credit sale,
forbearance or similar transaction made pursuant to this section
and shall cause such maximum rate of interest and finance
charge to be issued and disseminated to the public, such
maximum rate of interest and finance charge to be effective on
the first day of June and the first day of December for the next
succeeding six months.

(g) Notwithstanding the other provisions of this chapter, the
West Virginia lending and credit rate board shall not be
required to meet if no petition has been filed with the board
requesting a hearing and interest rates and economic conditions
have not changed sufficiently to indicate that any change in the
existing rate order would be required, and there are not at least
two board members who concur that a meeting of the board is
necessary. If the board does not meet, the maximum rates of
interest and finance charges prescribed by the board in the
existing rate order shall remain in full force and effect until the
next time the board meets and prescribes different maximum
rates of interest and finance charges.

(h) If circumstances and economic conditions require, the
chairperson or any three board members, at any time, may call
an emergency interim meeting of the West Virginia lending and
credit rate board, at which time the chairperson shall give ten
days' notice of the scheduled emergency meeting to the public.
All interested parties shall have the opportunity to be heard and
to submit information at such emergency meeting that is
relevant. Any and all emergency rate board orders shall be
effective within thirty days from the date of such emergency
meeting.
(i) Each member of the board, except those whose regular salary is paid by the state of West Virginia, shall receive seventy-five dollars per diem while actually engaged in the performance of the duties of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid by a third party the members shall not be reimbursed by the state. The reimbursement shall be paid out of the revolving fund established by section two of this article upon a requisition upon the state auditor, properly certified by the banking commissioner.

(j) In setting the maximum interest rates and finance charges, the board may set varying rates based on the type of credit transaction, the term of transaction, the type of debtor, the type of creditor and other factors relevant to determination of such rates. In addition, the board may set varying rates for ranges of principal balances within a single category of credit transactions.

(k) Pursuant to the provisions of article ten, chapter four of this code, the West Virginia lending and credit rate board shall continue to exist until the first day of July, two thousand five.

CHAPTER 264

(H. B. 2034 — By Delegates Damron, Coleman, Leach, Dempsey and Hubbard)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]
commission, clerk of the county commission and sheriff; and payment of tax.

Be it enacted by the Legislature of West Virginia:

That article five, 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 fourteen, to read as follows:

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-14. Assessment of motor vehicles previously titled jointly by married couples following final divorce order.

Beginning the first day of July, one thousand nine hundred ninety-nine, upon the presentment to the assessor of a certified copy of a final divorce order, entered under the provisions of section fifteen, article two, chapter forty-eight of this code, which grants the possession of a jointly titled motor vehicle to one of the parties of the divorce, the assessor shall list and assess that motor vehicle in the name of the person awarded possession of the vehicle in the final divorce order. If two jointly owned motor vehicles are involved in the divorce order and the vehicles are awarded exclusively to be titled one in the name of the husband and one in the name of the wife, the assessor shall apportion the assessment of the taxes owed on the vehicles between the husband and wife for the purposes of taxation on the vehicles so that the husband or wife will be responsible for the payment of taxes only on the vehicle awarded to him or her by the final divorce order. The assessor shall file notice of the apportionment with the county commission. Upon receipt of the notice, the county commission shall order that the taxes on the vehicles be apportioned in accordance with the apportionment set forth in the notice. The clerk of the county commission shall certify a copy of the order to the sheriff. Upon receipt of the order, the sheriff shall accept payment of the amount of tax apportioned to the motor vehicle awarded to the former spouse determined in the county commission’s order, and the receipt issued by the sheriff for such payment shall constitute payment in full of the taxes due for the motor vehicle. No provision of this section may be construed to relieve the former spouse from liability for payment of any tax imposed on any other property of the former spouse.
AN ACT to repeal sections seven-a, seven-b, article six, chapter eleven; and section one, article six-g, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and seven, article six of said chapter; to amend and reenact sections two, three, five, twelve, thirteen and seventeen, article six-g of said chapter; and to amend and reenact section ten-a, article two, chapter seventeen-a, all relating to the assessment of ad valorem fees on interstate motor vehicles; the disclosure and obtaining of information by the motor vehicles commissioner; and the duty and liability of the commissioner of motor vehicles to collect taxes and fees.

Be it enacted by the Legislature of West Virginia:

That sections seven-a, seven-b, article six, chapter eleven; and section one, article six-g, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one and seven, article six of said chapter be amended and reenacted; that sections two, three, five, twelve, thirteen and seventeen, article six-g of said chapter be amended and reenacted; and that section ten-a, article two, chapter seventeen-a be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

CHAPTER 11. TAXATION.
Article 6. Assessment of Public Service Businesses.

6G. Assessment of Interstate Corporation Motor Vehicle Business Registered under a Promotional Registration Agreement.

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-1. Returns of property to board of public works.
§11-6-7. Same — Telegraph and telephone companies.

§11-6-1. Returns of property to board of public works.

(a) On or before the first day of May in each year a return in writing shall be filed with the board of public works: (1) By the owner or operator of every railroad, wholly or in part, within this state; (2) by the owner or operator of every railroad bridge upon which a separate toll or fare is charged; (3) by the owner or operator of every car or line of cars used upon any railroad within the state for transportation or accommodation of freight or passengers, other than the owners or operators as may own or operate a railroad within the state; (4) by the owner or operator of every express company or express line, wholly or in part, within this state, used for the transportation by steam or otherwise of freight and other articles of commerce; (5) by the owner or operator of every pipeline, wholly or in part, within this state, used for the transportation of oil or gas or water, whether the oil or gas or water be owned by the owner or operator or not, or for the transmission of electrical or other power, or the transmission of steam or heat and power or of articles by pneumatic or other power; (6) by the owner or operator of every telegraph or telephone line, wholly or in part, within this state, except private lines not operated for compensation; (7) by the owner and operator of every gas company and electric lighting company furnishing gas or electricity for lighting, heating or power purposes; (8) by the owner or operator of hydroelectric companies for the generation and transmission of light, heat or power; (9) by the owner or operator of water companies furnishing or distributing water; and (10) by the owner or operator of all other public service corporations or persons engaged in public service business whose property is located, wholly or in part, within this state.
(b) The words "owner or operator," as applied herein to railroad companies, shall include every railroad company incorporated by or under the laws of this state for the purpose of constructing and operating a railroad, or of operating part of a railroad within this state, whether the railroad or any part of it be in operation or not; and shall also include every other railroad company, or persons or associations of persons, owning or operating a railroad or part of a railroad in this state on which freight or passengers, or both, are carried for compensation. The word "railroad," as used herein includes every street, city, suburban or electric or other railroad or railway.

(c) The words "owner or operator," as applied herein to express companies, shall include every express company incorporated by or under the laws of this state, or doing business in this state, whether incorporated or not, and any person or association of persons, owning or operating any express company or express line upon any railroad or otherwise, doing business partly or wholly within this state.

(d) The return shall be signed and sworn to by the owner or operator if a natural person, or, if the owner or operator shall be a corporation, shall be signed and sworn to by its president, vice president, secretary or principal accounting officer.

(e) The return required by this section of every owner or operator shall cover the year ending on the thirty-first day of December, next preceding, and shall be made on forms prescribed by the board of public works, which board is hereby invested with full power and authority and it is hereby made its duty to prescribe the forms as will require from any owner or operator herein mentioned information as in the judgment of the board may be of use to it in determining the true and actual value of the properties of the owners or operators.

§11-6-7. Same — Telegraph and telephone companies.

In the case of a telegraph or telephone line, the report shall show for every owner or operator: (a) The number of miles of lines owned, leased or operated within this state, the gauge of the wire, the number of strands of wire, the material of which it is made and, as accurately as may be, the time when the line
or any material part thereof was constructed or last replaced; (b) if such lines be partly within and partly without the state, the whole number of miles thereof within this state and the whole number of miles without this state, including all branches and connecting lines in and out of the state; (c) the true and actual value per mile of such line in each county of this state; (d) its stations, shops and machinery therein, and all buildings, structures and appendages connected or used therewith, together with all real estate, other than its telegraph or tele- phone line, owned or used by it in connection with its line, and of each parcel of such real estate and the true and actual value thereof in each county in this state in which it is located; (e) its personal property of every kind whatsoever, including money, credits and investments, and the amounts thereof wholly held or used in this state, showing the amount and value thereof in each county; (f) an itemized list of all other real property within this state, with the location thereof; and (g) the actual capital employed in the business of such owner or operator, the total amount of the bonded indebtedness of the owner or operator, with respect to the line, and of all indebtedness not bonded; and, if the owner or operator be a corporation, its capital stock, the character, number, amount and the market value of the shares thereof, and the amount of capital stock actually paid in; its bonded indebtedness and its indebtedness not bonded. The board of public works shall have the right to require any such owner or operator to furnish such other and further information as, in the judgment of the board, may be of use to it in determining the true and actual value of the property to be assessed to the owner or operator.

ARTICLE 6G. ASSESSMENT OF INTERSTATE CORPORATION MOTOR VEHICLE BUSINESS REGISTERED UNDER A PROPORTIONAL REGISTRATION AGREEMENT.

§ 11-6G-5. Compelling such disclosure; procuring information and tentative assessments by motor vehicles commissioner.
§ 11-6G-12. Payment of assessment by owner or operator.
§ 11-6G-13. No release of taxes assessed against such corporations.
§ 11-6G-17. Operating fund for interstate commerce disclosure division in auditor’s office.

(a) "Interstate motor vehicle," for purposes of this article, is defined as every truck, road tractor or semitrailer used as an interstate motor vehicle registered under a proportional registration agreement.

(b) The procedure for determining the value thereof is exclusively provided for under section two of this article.

(c) The words "owner or operator," as applied herein to trucks or semitrailers used as an interstate motor vehicle in the transportation of property, shall include every company incorporated by or under the laws of this state, or doing business in this state, whether incorporated or not, and any person or association of persons, owning or operating any truck or semitrailer used as an interstate motor vehicle in the transportation of property doing business partly or wholly within this state.

(d) Every interstate commercial motor vehicle covered by this article shall pay such taxes based upon the assessments as are required by law pursuant to rules promulgated by the tax commissioner.


(a) In the case of interstate motor vehicles used for the transportation of property and which are registered under a proportional registration agreement, pursuant to the provisions of section ten-a, article two, chapter seventeen-a of this code, the owners, operator or operators, for each interstate motor vehicle, on forms prescribed by the commissioner of motor vehicles, shall disclose the total miles driven in West Virginia and the total miles driven in any other states as reported in the most recent taxable year to the division of motor vehicles pursuant to any proportional registration agreement on file therewith. The return shall, additionally, show the gross capital cost of the interstate motor vehicle to the purchaser thereof and the year the purchaser acquired the interstate motor vehicle.

(b) Ad valorem fees provided for in this chapter shall,
notwithstanding the provisions of section five, article one-c of this chapter, be determined as follows for: (1) The gross capital cost of an interstate motor vehicle shall be multiplied by a percentage factor representing the remainder of the vehicle's value after depreciation according to a depreciation schedule established by the tax commissioner, which calculation shall yield the appraised value of the vehicle, which appraised value shall be multiplied by sixty percent to yield the assessed value; (2) for the interstate truck, road tractor, or power unit, registered in this state as part of a fleet registered under any proportional registration agreement under the provisions of section ten-a, article two, chapter seventeen-a of this code, the assessed value shall be multiplied by the apportioned percentage calculated in accordance with the articles and bylaws of any proportional registration agreement for the mileage reporting year, as reported to the division of motor vehicles for the corresponding registration year pursuant to any proportional registration agreement on file therewith to obtain the apportioned value, which apportioned value shall be multiplied by the applicable rate of tax.

§11-6G-5. Compelling such disclosure; procuring information and tentative assessments by motor vehicles commissioner.

(a) If any owner or operator fails to make disclosure within the time required by section one of this article, it shall be the duty of the commissioner of motor vehicles to take steps as may be necessary to compel such compliance, and to enforce any and all penalties imposed by law for such failure, pursuant to his or her authority under this article as well as section ten, article two, chapter seventeen-a, and section ten-a, article two, chapter seventeen-a of this code.

(b) The disclosure delivered to the motor vehicle's commissioner shall be examined by him or her, and if it be found insufficient in form or in any respect defective, imperfect or not in compliance with law, he or she shall compel the person required to make it to do so in proper and sufficient form, and in all respects as required by law.
15 (c) If any owner or operator fails to make such disclosure, the motor vehicles commissioner shall proceed, in a manner as to him or her may seem best, to obtain the facts and information required to be furnished by the disclosures.

19 (d) The motor vehicles commissioner may send for persons and papers, and may compel the attendance of any person and the production of any paper necessary, in the opinion of the motor vehicles commissioner, to enable him or her to obtain the information required for the proper discharge of his or her duties under this section.

§11-6G-12. Payment of assessment by owner or operator.

Beginning on the first day of July, one thousand nine hundred ninety-nine, it shall be the duty of the foreign registered owner or operator with interstate operations within and through West Virginia, so assessed and charged, to pay annually the amount of such ad valorem fees, and such registration fees as are set by the motor vehicles commissioner as are required into the treasury of the state by delivering payment of the same to the commissioner of motor vehicles in the form and manner prescribed by him or her. Further, beginning with the renewal or registration year starting the first day of July, one thousand nine hundred ninety-nine, it shall be the duty of the commissioner of motor vehicles to assess and charge the owner or operator the annual amount of ad valorem fees and registration fees owed. The ad valorem and registration fees will be assessed and charged annually prior to the registration year during the renewal period. It shall be the duty of the owner or operator with interstate operations and domiciled in the state, so assessed and charged, to pay annually prior to the registration, the amount of taxes and registration fees set by the motor vehicles commissioner in the form and manner prescribed by him or her. The payment of taxes by any owner or operator shall not prejudice or affect the right of the owner or operator to obtain relief against the assessment or valuation of its property in proceedings now pending or hereafter brought under the provisions of section eight of this article, or in any suit, action or proceeding in which relief may be obtainable; and if under the provisions of said section eight or in any suit, action
or proceeding, it be ascertained that the assessment or valuation of the property of the owner or operator is too high and the same is accordingly corrected, it shall be the duty of the auditor of the state to issue to the owner or operator a certificate showing the amount of taxes and which have been overpaid, and the certificate shall be receivable thereafter for the amount of overpayment in payment of any ad valorem fees and assessed against the property of the owner or operator, its successors or assigns. It shall likewise be the duty of said auditor to certify to the county commission, school districts and municipalities, the amounts of the respective overpayments distributable to such counties, school districts and municipalities.

Implementation of collection of assessments upon interstate commercial motor vehicles by the commissioner of motor vehicles shall begin the first day of July, one thousand nine hundred ninety-nine. The motor vehicles commissioner, upon receipt of funds from other jurisdictions under a proportional registration agreement, shall deliver the funds received to the auditor beginning in August, one thousand nine hundred ninety-nine, and thereafter every thirty days in arrears. All moneys received by the auditor under the provisions of this section shall be transmitted to the several counties within thirty days from receipt thereof.

§11-6G-13. No release of taxes assessed against such corporations.

Neither the county commission of any county, nor any board of education, nor the municipal authorities of any incorporated town, shall have jurisdiction, power or authority, by compromise or otherwise, to remit or release any portion of the taxes so assessed upon the property of any owner or operator. It shall be the duty of the motor vehicles commissioner to collect the whole thereof, regardless of any order or direction of any county commission, board of education or municipal authority to the contrary. Any member of the county commission or board of education, or of the council of a municipal corporation, who shall vote to remit or release any part of the taxes, so assessed on the property of any owner or
operator, shall be guilty of a misdemeanor and fined five
hundred dollars, and shall be removed from his or her office by
the court by which the judgment of the fine is rendered, in
addition to the fine.

§11-6G-17. Operating fund for interstate commerce disclosure
division in auditor’s office.

The auditor shall establish a special operating fund in the
state treasury for the interstate commerce disclosure division in
his or her office. The auditor shall pay into the fund one percent
of the gross receipts of all moneys collected as provided for in
this article. From the fund, the auditor shall reimburse the tax
division and the division of motor vehicles for the actual
operating expenses incurred in the performance of its duties
required by this article. The reimbursements to the tax division
and division of motor vehicles from the fund shall not exceed
one third of the annual deposits to the fund per agency. Any
moneys remaining in the special operating fund after reim-
bursement to the tax division and the division of motor vehicles
shall be used by the auditor for funding the operation of the
interstate commerce disclosure division located in his or her
office.

The interstate commerce disclosure division is hereby
granted authority and required to share any and all information
obtained by the division in the implementation of this article
with state auditor, tax commissioner and the commissioner of
motor vehicles to effectuate the collection of taxes and fees
under this article. The motor vehicles commissioner is hereby
authorized and required to share any and all information
obtained by the division of motor vehicles in the implementa-
tion of this article. The commissioner of motor vehicles will
supply to the interstate commerce disclosure division the names
of, location or locations of, and amount or amounts paid by
West Virginia owners or operators of interstate motor vehicles
registered under the terms of any proportional registration
agreement. The tax commissioner is hereby authorized and
required to share any and all information obtained by the
department of tax and revenue. The state auditor and the
32 interstate commerce disclosure division is hereby authorized  
33 and required to share any and all information obtained by the  
34 auditor or the division.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,  
REGISTRATION, CERTIFICATE OF TITLE, AND  
ANTITHEFT PROVISIONS.

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.

§17A-2-10a. Same — Authorizing the entry of this state into  
reciprocal proportional registration agreements;  
payment of taxes; issuance of registration plates  
or markers; promulgation of rules; interagency  
cooperation; requirement that all registrants pay  
tax; intermittent interstate commerce and pro­  
mulgation of rules; proportional registration  
agreement prevails.

(a) The commissioner of motor vehicles is hereby autho-  
rized and empowered to enter into reciprocal agreements on  
behalf of this state with any jurisdiction which permits or  
requires the licensing of motor vehicles in interstate or com­  
bined interstate and intrastate commerce and the payment of  
taxes, registration, licensing or other fees fixed by the motor  
vehicle commissioner, pursuant to the execution of this article  
on an apportionment basis commensurate with and determined  
by the miles traveled on public roads and highways in that  
jurisdiction, as compared with the miles traveled on public  
roads and highways in other jurisdictions or on any other  
equitable basis of apportionment, and if that jurisdiction  
exempts motor vehicles registered in other jurisdictions under  
that apportionment basis from the requirements of full payment  
of its own registration, license or other fixed fees, the commis­  
sioner, by agreement may adopt the exemption as to those  
motor vehicles, whether owned by residents or nonresidents of  
this state and regardless of where the vehicles are registered.

(b) The agreements under any terms, conditions or restric-  
tions as the commissioner considers proper may provide that  
owners of motor vehicles operated in interstate or combined  
interstate and intrastate commerce in this state shall be permit-
section, the commissioner is expressly authorized and empowered to enter into and become a member of the international registration plan or other designation that may from time to time be given to the reciprocal plan.

(d) The commissioner shall prescribe the substance, form, color and context of any registration plate or marker issued under the provisions of this section, each of which shall be visually distinguishable from other registration plates or markers produced by the division of motor vehicles.

(e) The commissioner is authorized to promulgate procedural rules as may be necessary to carry out the provisions of any agreements entered into pursuant to this section.

(f) The commissioner is authorized to collect and receive funds under this article pursuant to the authority vested in him or her under article six-g of chapter eleven of this code.

(g) The commissioner is hereby authorized and required to share with the interstate commerce disclosure division of the office of the state auditor any and all information acquired by the division of motor vehicles pursuant to the implementation of this article. The division shall provide to the interstate commerce disclosure division, and the department of tax and revenue the name of the location and amount paid by West Virginia owners or operators of interstate motor vehicles registered under the proportional registration agreement.

(h) For any other irregular, intermittent or temporary interstate commerce activity, the division of motor vehicles is
hereby empowered to promulgate rules for the administration and oversight thereof.

(i) Notwithstanding any other provision of the code to the contrary, the requirements of the proportional assessment plan as contained in article six-g, chapter eleven of this code, and the provisions of this chapter, shall prevail in the event of any conflict with any other portion of the code.

CHAPTER 266

(S. B. 510 — By Senators Prezioso, Craigo, Sprouse, Plymale, McKenzie, Mitchell, Sharpe, Ross, Bowman, Jackson, Minard, Kessler, Unger and Ball)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-n, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two, chapter twelve of said code, all relating to payment of taxes and other amounts due state; permitting taxes to be paid by credit, charge or debit card or other commercially acceptable means; authorizing the tax commissioner to promulgate legislative rules; setting forth special provisions for the use of credit, debit or charge cards; and providing for confidentiality of information.

Be it enacted by the Legislature of West Virginia:

That section five-n, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article two, chapter twelve of said code be amended and reenacted, all to read as follows:

Chapter
11. Taxation.

CHAPTER 11. TAXATION.
ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5n. Payment by commercially acceptable means.

(a) Authority to receive. — The tax commissioner may receive in payment for taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) any commercially acceptable means that the commissioner considers appropriate to the extent and under the conditions provided in rules proposed by the commissioner for legislative approval in accordance with article three, chapter twenty-nine-a of this code.

(b) Ultimate liability. — If a check, money order or other method of payment, including payment by credit card, debit card or charge card received in payment of taxes or fees or tax stamps or crowns is not duly paid, or is paid and subsequently charged back to the tax commissioner, the person by whom the check, money order or other method of payment was tendered remains liable for payment of the tax or fee or for the tax stamps or crowns, and for all legal penalties and additions thereto, to the same extent as if the check, money order or other method of payment had not been tendered.

(c) Liability of bank and others. — If any certified, treasurer’s or cashier’s check (or other guaranteed draft), any money order or any means of payment that has been guaranteed by a financial organization (such as a credit card, debit card or charge card transaction which has been guaranteed expressly by a financial organization), is received for payment of taxes or fees or tax stamps or crowns and is not duly paid, the state of West Virginia shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for:

(1) The amount of the check (or draft) upon all the assets of the financial institution on which it is drawn;

(2) The amount of the money order upon all the assets of the insurer thereof; or

(3) The guaranteed amount of any other transaction upon all assets of the institution making the guarantee; and the amount shall be paid out of the assets in preference to any other claims.
whatever against the financial institution, issuer or guarantee-
ing institution, except the necessary costs and expenses of
administration and perfected liens that are prior in time.

(d) *Bad check charge.* — If any check or money order
tendered in payment of any amount of tax or fee or tax stamps
or crowns or any interest, additions to tax or penalties is not
duly paid, then, in addition to any other penalties provided by
law, there shall be paid as a penalty by the person who tendered
the check, upon written notice and demand by the tax commis-
sioner, in the same manner as tax, an amount equal to the
service charge which the bank or other financial institution
charged the state for each check returned to the tax commis-
sioner because the account is closed or there are insufficient
funds in the account.

(e)*Payment by other means.* —

(1) *Authority to prescribe rule.* — The tax commissioner
shall propose rules for legislative approval, in accordance with
article three, chapter twenty-nine-a of this code, as the tax
commissioner considers necessary to receive payment by
commercially acceptable means, including rules that:

(A) Specify which methods of payment by commercially
acceptable means are acceptable;

(B) Specify when payment by those means shall be
considered received;

(C) Identify types of nontax matters related to payment by
those means that are to be resolved by persons ultimately liable
for payment and financial intermediaries, without the involve-
ment of the tax commissioner; and

(D) Ensure that tax matters shall be resolved by the tax
commissioner, without the involvement of financial intermedia-
ries.

(2) *Obtaining services.* — The tax commissioner shall use
the state treasurer’s contracts and system for receiving pay-
ments by credit card, debit card, charge card or any other
commercially acceptable means. The tax commissioner may not
pay any fee or provide any other consideration in obtaining these services. The state treasurer may not pay any fee or provide any consideration for receiving payments of taxes or fees (or in payment for excise tax stamps and tax crowns) described in this section by credit card, debit card, charge card or any other commercially acceptable means, and any cost for processing the payment shall be included, in advance, in the amount of the transaction and assessed to the party making the payment.

(3) Special provisions for use of credit cards. — If use of credit cards is accepted as a method of payment of taxes pursuant to subsection (a):

(A) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) by a person by use of a credit card shall not be subject to section 161 of the Truth in Lending Act (15 U.S.C. 1666), or to any similar provisions of state law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the credit card account such as a computational error or numerical transposition in the credit card transaction or an issue as to whether the person authorized payment by use of the credit card;

(B) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) shall not be subject to section 170 of the Truth in Lending Act (15 U.S.C. 1666i), or to any similar provisions of state law;

(C) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) by a person by use of a debit card shall not be subject to section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or to any similar provisions of state law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the debit card account such as a computational error or numerical transposition in the debit card transaction or an issue as to whether the person authorized payment by use of the debit card;
(D) To the extent allowed under federal law, the term “creditor” under section 103(f) of the Truth in Lending Act (15 U.S.C. 1602 (f)) shall not include the tax commissioner with respect to credit card transactions in payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns); and

(E) Notwithstanding any other provisions of law to the contrary, in the case of payment made by credit card or debit card transaction of an amount owed to a person as the result of the correction of an error under section 161 of the Truth in Lending Act (15 U.S.C. 1666) or section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), the tax commissioner is authorized to provide such amount to such person as a credit to that person’s credit card or debit card account through the applicable credit card or debit card system.

(f) Confidentiality of information. —

(1) In general. — Except as otherwise authorized by this subsection, no person may use or disclose any information relating to credit card, debit card or charge card transactions other than for purposes directly related to the processing of the transactions or the billing or collection of amounts charged or debited pursuant thereto.

(2) Exceptions. —

(A) Credit card, debit card or charge card issuers or others acting on behalf of the issuers may also use and disclose the information for purposes directly related to servicing an issuer’s accounts.

(B) Credit card, debit card or charge card issuers or others directly involved in the processing of credit card, debit card or charge card transactions or the billing or collection of amounts charged or debited to the credit card, debit card or charge card, may also use and disclose the information for purposes directly related to:

(i) Statistical risk and profitability assessment;

(ii) Transferring receivables, accounts or interest therein;
(iii) Auditing the account information;
(iv) Complying with federal, state or local law; and
(v) Properly authorized civil, criminal or regulatory investigation by federal, state or local authorities.

(3) Procedures. — Use and disclosure of information under this paragraph shall be made only to the extent authorized by written procedures promulgated by the tax commissioner.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-1. How and to whom taxes and other amounts due the state or any political subdivision, official, department, board, commission or other collecting agency thereof may be paid.

All persons, firms and corporations shall promptly pay all taxes and other amounts due from them to the state, or to any political subdivision, official, department, board, commission or other collecting agency thereof authorized by law to collect the taxes and other amounts due by any authorized commercially acceptable means, in money, United States currency or by check, bank draft, certified check, cashier's check, post office money order or express money order payable and delivered to the official, department, board, commission or collecting agency thereof authorized by law to collect the taxes and other amounts due and having the account upon which the taxes or amounts due are chargeable against the payer of the taxes or amounts due. The duly elected or appointed officers of the state and of its political subdivisions, departments, boards, commissions and collecting agencies having the account on which the taxes or other amounts due are chargeable against the payer of the taxes or other amounts due, the duly elected or appointed officers of the state and of its political subdivisions, departments, boards, commissions and collecting agencies having the account on which the taxes or other amounts due are chargeable against the payer of the taxes or other amounts due, and their respective agents, deputies, assistants and employees shall in no case be the agent of the payer in and about the collection of the taxes or other amounts, but shall at all times and under all circumstances be
the agent of the state, its political subdivision, official, department, board, commission or collecting agency having the account on which the taxes or amounts are chargeable against the payer of the taxes or other amounts due and authorized by law to collect the same.

CHAPTER 267

(H. B. 2884 — By Mr. Speaker, Mr. Kiss, and Delegates Michael, Trump and Faircloth)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-o, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to business and occupation tax for producing electricity; exempting municipally-owned generating units from tax; and providing that electricity generated in this state by a partnership or limited liability company be considered to be generated pro rata by its partners or members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-20. Business of generating or producing or selling electricity on and after the first day of June, one thousand nine hundred ninety-five; definitions; rate of tax; exemptions; effective date.

(a) Definitions. — As used in this section:

(1) “Average four-year generation” is computed by dividing by four the sum of a generating unit’s net generation, expressed in kilowatt hours, for calendar years one thousand nine hundred ninety-one, one thousand nine hundred ninety-two, one thousand nine hundred ninety-three, and one thousand nine hundred ninety-four.
sand nine hundred ninety-three, and one thousand nine hundred ninety-four. For any generating unit which was newly installed and placed into commercial operation after the first day of January, one thousand nine hundred ninety-one and prior to the effective date of this section, "average four-year generation" is computed by dividing such unit's net generation for the period beginning with the month in which the unit was placed into commercial operation and ending with the month preceding the effective date of this section by the number of months in such period and multiplying the resulting amount by twelve with the result being a representative twelve-month average of the unit's net generation while in an operational status.

(2) "Capacity factor" means a fraction, the numerator of which is average four-year generation and the denominator of which is the maximum possible annual generation.

(3) "Generating unit" means a mechanical apparatus or structure which through the operation of its component parts is capable of generating or producing electricity and is regularly used for this purpose.

(4) "Inactive reserve" means the removal of a generating unit from commercial service for a period of not less than twelve consecutive months as a result of lack of need for generation from the generating unit or as a result of the requirements of state or federal law or the removal of a generating unit from commercial service for any period as a result of any physical exigency which is beyond the reasonable control of the taxpayer.

(5) "Maximum possible annual generation" means the product, expressed in kilowatt hours, of official capability times eight thousand seven hundred sixty hours.

(6) "Official capability" means the nameplate capacity rating of a generating unit expressed in kilowatts.

(7) "Peaking unit" means a generating unit designed for the limited purpose of meeting peak demands for electricity or filling emergency electricity requirements.
(8) "Retired from service" means the removal of a generating unit from commercial service for a period of at least twelve consecutive months with the intent that the unit will not thereafter be returned to active service.

(9) "Taxable generating capacity" means the product, expressed in kilowatts, of the capacity factor times the official capability of a generating unit, subject to the modifications set forth in subdivisions (2) and (3), subsection (c) of this section.

(10) "Net generation" for a period means the kilowatt hours of net generation available for sale generated or produced by the generating unit in this state during such period less the following:

(A) Twenty-one twenty-sixths of the kilowatt hours of electricity generated at the generating unit and sold during such period to a plant location of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour in a year or where the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year;

(B) Twenty-one twenty-sixths of the kilowatt hours of electricity produced or generated at the generating unit during such period by any person producing electric power and an alternative form of energy at a facility located in this state substantially from gob or other mine refuse;

(C) The total kilowatt hours of electricity generated at the generating unit exempted from tax during such period by subsection (b), section two-n of this article.

(b) Rate of tax. — Upon every person engaging or continuing within this state in the business of generating or producing electricity for sale, profit or commercial use, either directly or indirectly through the activity of others, in whole or in part, or in the business of selling electricity to consumers, or in both businesses, the tax imposed by section two of this article shall be equal to:

(1) For taxpayers who generate or produce electricity for sale, profit or commercial use, the product of twenty-two
dollars and seventy-eight cents multiplied by the taxable
generating capacity of each generating unit in this state owned
or leased by the taxpayer, subject to the modifications set forth
in subsection (c) of this section: Provided, That with respect to
each generating unit in this state which has installed a flue gas
desulfurization system, the tax imposed by section two of this
article shall, on and after the thirty-first day of January, one
thousand nine hundred ninety-six, be equal to the product of
twenty dollars and seventy cents multiplied by the taxable
generating capacity of the units, subject to the modifications set
forth in subsection (c) of this section: Provided, however, That
with respect to kilowatt hours sold to or used by a plant location
engaged in manufacturing activity in which the contract
demand at such plant location exceeds two hundred thousand
kilowatts per hour per year or if the usage at such plant location
exceeds two hundred thousand kilowatts per hour in a year, in
no event shall the tax imposed by this article with respect to the
sale or use of such electricity exceed five hundredths of one
cent times the kilowatt hours sold to or used by a plant engaged
in such a manufacturing activity; and

(2) For taxpayers who sell electricity to consumers in this
state that is not generated or produced in this state by the
taxpayer, nineteen hundredths of one cent times the kilowatt
hours of electricity sold to consumers in this state that were not
generated or produced in this state by the taxpayer, except that
the rate shall be five hundredths of one cent times the kilowatt
hours of electricity not generated or produced in this state by
the taxpayer which is sold to a plant location in this state of a
customer engaged in manufacturing activity if the contract
demand at such plant location exceeds two hundred thousand
kilowatts per hour per year or if the usage at such plant location
exceeds two hundred thousand kilowatts per hour in a year. The
measure of tax under this subdivision (2) shall be equal to the
total kilowatt hours of electricity sold to consumers in the state
during the taxable year, that were not generated or produced in
this state by the taxpayer, to be determined by subtracting from
the total kilowatt hours of electricity sold to consumers in the
state the net kilowatt hours of electricity generated or produced
in the state by the taxpayer during the taxable year. For the
purposes of this subdivision, net kilowatt hours of electricity
generated or produced in this state by the taxpayer includes the
taxpayer’s pro rata share of electricity generated or produced in
this state by a partnership or limited liability company of which
the taxpayer is a partner or member. The provisions of this
subdivision (2) shall not apply to those kilowatt hours exempt
under subsection (b), section two-n of this article. Any person
taxable under this subdivision (2) shall be allowed a credit
against the amount of tax due under this subdivision (2) for any
electric power generation taxes or a tax similar to the tax
imposed by subdivision (1) of this subsection (b) paid by the
taxpayer with respect to such electric power to the state in
which such power was generated or produced. The amount of
credit allowed shall not exceed the tax liability arising under
this subdivision (2) with respect to the sale of such power.

(c) The following provisions are applicable to taxpayers
subject to tax under subdivision (1), subsection (b) of this
section:

(1) Retired units; inactive reserve. — If a generating unit is
retired from service or placed in inactive reserve, a taxpayer
shall not be liable for tax computed with respect to the taxable
generating capacity of the unit for the period that the unit is
inactive or retired. The taxpayer shall provide written notice to
the joint committee on government and finance, as well as to
any other entity as may be otherwise provided by law, eighteen
months prior to retiring any generating unit from service in this
state.

(2) New generating units. — If a new generating unit, other
than a peaking unit, is placed in initial service on or after the
effective date of this section, the generating unit’s taxable
generating capacity shall equal forty percent of the official
capability of the unit: Provided, That the taxable generating
capacity of a municipally-owned generating unit shall equal
zero percent of the official capability of the unit.

(3) Peaking units. — If a peaking unit is placed in initial
service on or after the effective date of this section, the generat-
ing unit’s taxable generating capacity shall equal five percent
of the official capability of the unit: Provided, That the taxable
generating capacity of a municipally-owned generating plant
shall equal zero percent of the official capability of the unit.

(4) Transfers of interests in generating units. — If a
taxpayer acquires an interest in a generating unit, the taxpayer
shall include the computation of taxable generating capacity of
said unit in the determination of the taxpayer’s tax liability as
of the date of the acquisition. Conversely, if a taxpayer transfers
an interest in a generating unit, the taxpayer shall not for
periods thereafter be liable for tax computed with respect to the
taxable generating capacity of such transferred unit.

(5) Proration, allocation. — The tax commissioner shall
promulgate rules in conformity with the provisions of article
three, chapter twenty-nine-a of this code to provide for the
administration of this section and to equitably prorate taxes for
a taxable year in which a generating unit is first placed in
service, retired or placed in inactive reserve, or in which a
taxpayer acquires or transfers an interest in a generating unit, to
equitably allocate and reallocate adjustments to net generation,
and to equitably allocate taxes among multiple taxpayers with
interests in a single generating unit, it being the intent of the
Legislature to prohibit multiple taxation of the same taxable
generating capacity.

So as to provide for an orderly transition with respect to the
rate making effect of this section, those electric light and power
companies which, as of the effective date of this section, are
permitted by the West Virginia public service commission to
utilize deferred accounting for purposes of recovery from
ratepayers of any portion of business and occupation tax
expense under this article shall be permitted, until such time
that action pursuant to a rate application or order of the com-
mision provides for appropriate alternative rate making
treatment for such expense, to recover the tax expense imposed
by this section by means of deferred accounting to the extent
that the tax expense imposed by this section exceeds the level
of business and occupation tax under this article currently
allowed in rates.
(6) Electricity generated by manufacturer or affiliate for use in manufacturing activity. — When electricity used in a manufacturing activity is generated in this state by the person who owns the manufacturing facility in which the electricity is used and the electricity generating unit or units producing the electricity so used are owned by such manufacturer, or by a member of the manufacturer's controlled group, as defined in section 267 of the Internal Revenue Code of 1986, as amended, the generation of the electricity shall not be taxable under this article: Provided, That any electricity generated or produced at the generating unit or units which is sold or used for purposes other than in the manufacturing activity shall be taxed under this section and the amount of tax payable shall be adjusted to be equal to an amount which is proportional to the electricity sold for purposes other than the manufacturing activity. The department of tax and revenue shall promulgate rules in accordance with article three, chapter twenty-nine-a of the code: Provided, however, That the rules shall be promulgated as emergency rules.

(d) Beginning the first day of June, one thousand nine hundred ninety-five, electric light and power companies that actually paid tax based on the provisions of subdivision (3), subsection (a), section two-d of this article or section two-m of this article for every taxable month in one thousand nine hundred ninety-four shall determine their liability for payment of tax under this article in accordance with subdivisions (1) and (2) of this subsection. All other electric light and power companies shall determine their liability for payment of tax under this article exclusively under this section beginning the first day of June, one thousand nine hundred ninety-five and thereafter.

(1) If for taxable months beginning on or after the first day of June, one thousand nine hundred ninety-five, liability for tax under this section is equal to or greater than the sum of the power company's liability for payment of tax under subdivision (3), subsection (a), section two-d of this article and this section, then the company shall pay the tax due under this section and not the tax due under subdivision (3), subsection (a), section
two-d of this article and section two-m of this article. If tax
liability under this section is less, then the tax shall be paid
under subdivision (3), subsection (a), section two-d of this
article and section two-m and the tax due under this section
shall not be paid.

(2) Notwithstanding subdivision (1) of this subsection, for
taxable years beginning on or after the first day of January, one
thousand nine hundred ninety-eight, all electric light and power
companies shall determine their liability for payment of tax
under this article exclusively under this section.

CHAPTER 268

(Com. Sub. for H. B. 2749 — By Delegates Cann,
Coleman, Laird, Kominar and Jenkins)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article thirteen-a,
chapter eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to exemptions of certain
natural gas and oil production from imposition of the severance
tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3a. Imposition of tax on privilege of severing natural gas
or oil.

(a) Imposition of tax. — For the privilege of engaging or
continuing within this state in the business of severing natural
gas or oil for sale, profit or commercial use, there is hereby
levied and shall be collected from every person exercising such
privilege an annual privilege tax: Provided, That effective for all taxable periods beginning on or after the first day of January, two thousand, there is an exemption from the imposition of the tax provided for in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than five thousand cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

CHAPTER 269

(Com. Sub. for H. B. 2999 — By Delegates Warner, Michael And Martin)

[Passed March 5, 1999; in effect from passage. Approved by the Governor.]
relating to a tax credit for investment in aerospace industrial facilities; authorizing credit for eligible taxpayers, and members, distributive interest holders and partners of eligible taxpayers; specifying credit amount for qualified investment in property placed in service or use in an aerospace industrial facility after the thirtieth day of June, one thousand nine hundred ninety-eight; and specifying conditions and limitations on the tax credit.

Be it enacted by the Legislature of West Virginia:

That article thirteen-d, 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 three-f, to read as follows:

ARTICLE 13D. TAX CREDITS FOR INDUSTRIAL EXPANSION AND REVITALIZATION, RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENT PROJECTS, MANAGEMENT INFORMATION SERVICES FACILITIES, INDUSTRIAL FACILITIES PRODUCING COAL-BASED LIQUIDS USED TO PRODUCE SYNTHETIC FUELS, AND AEROSPACE INDUSTRIAL FACILITY INVESTMENTS.

§11-13D-3f. Amount of credit allowed and application of credit for qualified investment in an aerospace industrial facility.

(a) Credit allowed. — (1) There is allowed to eligible taxpayers which have made qualified investment in an aerospace industrial facility, a credit against the taxes imposed by articles twenty-three and twenty-four of this chapter for qualified investment in an aerospace industrial facility. The amount of credit is determined as provided in this section.

(2) There is allowed to members, distributive interest holders and partners of eligible taxpayers described in paragraph (3), subsection (c) of this section, a credit against the taxes imposed by article twenty-four of this chapter for qualified investment in an aerospace industrial facility. The amount of credit is determined as provided in this section.

(b) Credit amount for qualified investment in property placed in service or use in an aerospace industrial facility after
the thirtieth day of June, one thousand nine hundred ninety-eight. — For property purchased or leased by an eligible taxpayer and placed in service or use after the thirtieth day of June, one thousand nine hundred ninety-eight, as part of an aerospace industrial facility, the amount of allowable credit is equal to fifteen percent of the qualified investment (as determined under subsection (e) of this section), and reduces the taxpayer’s annual business franchise tax liability under article twenty-three of this chapter and the taxpayer’s annual corporation net income tax liability under article twenty-four of this chapter, subject to the following conditions and limitations:

(1) The amount of credit allowable is applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the qualified investment is first placed in service or use in this state.

(2) When in any taxable year a taxpayer is entitled to claim credit under this section and under any other section of this article, (or any combination thereof), the total amount of all credits allowed for the tax year under this article shall not exceed the sixty percent of total tax liability offset limitations set forth in subsection (c) of this section.

(3) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for any unused portion of any annual credit allowance. Such unused credit is forfeited.

(4) No credit is allowed under this article for investment in any property for which credit is allowed under article thirteen-c of this chapter.

(5) No credit is allowed under this section for investment in any property for which credit is allowed under any other section of this article.

(c) Application of credit. — (1) The annual credit for qualified investment in an aerospace industrial facility is first applied to reduce the annual West Virginia business franchise tax liability imposed under article twenty-three of this chapter for the tax year. The amount of annual credit allowed may not reduce the annual liability for such tax year below sixty percent
of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and in the absence of all other credits against such tax, except the credits set forth in section seventeen, article twenty-three of this chapter.

(2) After application of this credit against business franchise tax as provided in subdivision (1) of this subsection, the remaining annual credit, if any, is then applied to reduce the annual West Virginia corporation net income tax liability imposed under article twenty-four of this chapter for the tax year. The amount of annual credit allowed may not reduce the annual corporation net income tax liability for such tax year below sixty percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and in the absence of all other credits against tax.

(3) In the case of an eligible taxpayer that:

(A) Is a limited liability company, partnership or other business organization taxed under article twenty-three of this chapter, but not taxed under article twenty-four of this chapter,

(B) Is not treated as a corporation for federal income tax purposes, and

(C) Is a “flow through” entity or conduit for income distributed to members, distributional interest holders or partners, the following applies: Members, distributional interest holders or partners, of the eligible taxpayer subject to the corporation net income tax imposed under article twenty-four of this chapter may apply this credit against that portion of their annual corporation net income tax liability imposed under article twenty-four of this chapter for the tax year on that distributive income directly and solely derived from the eligible taxpayer. The amount of annual credit allowed may not reduce the annual corporation net income tax liability for such tax year below sixty percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and in the absence of all other credits against tax.
(d) Definitions. — For purposes of this section:

1. "Aerospace industrial facility" means a facility used by an eligible taxpayer for the manufacturing, rebuilding or physical refurbishment of:

   A. Aircraft,
   B. Aircraft engines,
   C. Aircraft engine parts,
   D. Other aircraft parts,
   E. Aircraft auxiliary equipment, including fluid power aircraft subassemblies,
   F. Guided missiles,
   G. Space vehicles,
   H. Guided missile and space vehicle propulsion units,
   I. Guided missile parts,
   J. Propellers,
   K. Space vehicle parts, or
   L. Guided missile and space vehicle auxiliary parts.

2. "Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock of at least one of the other corporations.

3. "Corporation" means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument, and any organization which is treated as a corporation for federal income tax purposes.
(4) "Eligible taxpayer" means, for purposes of this section, a person subject to tax under article twenty-three or article twenty-four of this chapter, and regularly engaged in the business of manufacturing, rebuilding or physical refurbishment of:

(A) Aircraft,
(B) Aircraft engines,
(C) Aircraft engine parts,
(D) Other aircraft parts,
(E) Aircraft auxiliary equipment, including fluid power aircraft subassemblies,
(F) Guided missiles,
(G) Space vehicles,
(H) Guided missile and space vehicle propulsion units,
(I) Guided missile parts,
(J) Propellers,
(K) Space vehicle parts, or
(L) Guided missile and space vehicle auxiliary parts.

The term "eligible taxpayer" does not include any person whose only activity with respect to an aerospace industrial facility is to lease it to another person or persons.

(5) "Placed in service or use." For purposes of the credit allowed by this section, property shall be considered "placed in service or use" on the earliest of the following dates:

(A) The date on which the property is physically placed in service or use in an aerospace industrial facility;
(B) The closing date of the eligible taxpayer's federal income tax year during which federal income tax depreciation with respect to the property has begun, or in the case of leased property, the closing date of the eligible taxpayer's federal income tax year during which expenses for lease payments for
the property are first taken as a deduction from income for federal income tax purposes; or

(C) The closing date of the eligible taxpayer’s federal income tax year during which the property is placed in a condition or state of readiness and availability for a specifically assigned function in an aerospace industrial facility, but where the property has not been physically placed in service or use in the aerospace industrial facility on that closing date.

(e) Qualified investment in an aerospace industrial facility.

(1) Purchased property. — The qualified investment in tangible personal property or real property purchased for use as a component part of an aerospace industrial facility is the applicable percentage of the cost of such property purchased for an aerospace industrial facility, which is placed in service or use in this state, by the eligible taxpayer during the tax year as determined under this section.

(2) Applicable percentage. — For the purposes of this subsection, the applicable percentage for any property shall be determined under the following table:

<table>
<thead>
<tr>
<th>Useful Life</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33 1/3%</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66 2/3%</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100%</td>
</tr>
</tbody>
</table>

The useful life of any property for purposes of this section shall be the actual economic useful life determined as of the date such property is first placed in service or use in this state by the taxpayer, determined for financial accounting purposes in accordance with generally accepted principles of accounting.

(3)(A) Cost. — For purposes of this subsection, the cost of each item of property purchased for use as a component part of an aerospace industrial facility shall be the fair market value or the actual cost, whichever is less, and in no event shall the cost exceed the fair market value as of the date such property is first placed in service or use in this state by the eligible taxpayer. Cost is determined under the following rules:
(B) *Trade-ins.* — Cost does not include the value of property given in trade or exchange for the property purchased for use as a component part of an aerospace industrial facility.

(C) *Damaged, destroyed or stolen property.* — If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(4) *Rental property.* — (A) The qualified investment in tangible personal property or real property leased for use as a component part of an aerospace industrial facility is the portion specified in this subdivision of the cost of such property purchased for an aerospace industrial facility, which is placed in service or use in this state, by the eligible taxpayer during the tax year as determined under this section.

(B) The qualified investment in leases of real property acquired by written lease for a primary term of ten years or longer is one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years. Leases of realty having a primary term of less than ten years do not qualify for purposes of this section.

(C) The qualified investment in leases of tangible personal property acquired by written lease for a primary term of:

(i) Four years, or longer, is one third of the rent reserved for the primary term of the lease;

(ii) Six years, or longer, is two thirds of the rent reserved for the primary term of the lease; or

(iii) Eight years, or longer, is one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years: *Provided,* That in no event does rent reserved include rent for any year subsequent to expiration of the book life of the property, determined using the straight-line method of depreciation.

(5) *Transferred property.* — (A) The cost of property owned and used by the taxpayer out-of-state and then brought
into this state, is determined based on the remaining useful life
of the property at the time it is placed in service or use in this
state, and the cost is the original cost of the property to the
taxpayer less straight line depreciation allowable for the tax
years or portions thereof taxpayer used the property outside this
state.

(B) In the case of leased tangible personal property, cost is
based on the period remaining in the primary term of the lease
after the property is brought into this state for use in an aero-
space industrial facility of an eligible taxpayer, and is the rent
reserved for the remaining period of the primary term of the
lease, not to exceed twenty years, or the remaining useful life
of the property, whichever is less.

(C) Qualified investment in transferred property is com-
puted by applying the four-year, six-year and eight-year
requirements of this section to the cost thereof with the applica-
table four-year, six-year and eight-year period determined based
on the remaining useful life or remaining primary lease term at
the time the property is placed in service or use in this state.

(6) Property purchased for multiple use. — Investment in
property purchased for use in an aerospace industrial facility
and for some other use does not qualify for purposes of this
credit.

(7) Self-constructed property. — In the case of self-
constructed property, the cost thereof is the amount properly
charged to the capital account for purposes of depreciation for
federal income tax purposes.

(8) Specific exclusions from qualification. — The following
investment does not constitute qualified investment in an
aerospace industrial facility, and does not qualify for purposes
of this credit.

(A) Investment by purchase or lease in natural resources in
place.

(B) Investment in purchased or leased property, the cost or
consideration for which cannot be quantified with any reason-
able degree of accuracy at the time such property is placed in
service or use: Provided, That when the contract of purchase or lease specifies a minimum purchase price which can be quantified or minimum annual rent which can be quantified, the amount thereof shall be used to determine the cost thereof. If the property and lease otherwise qualify under the primary lease term requirements and other requirements of this section for property purchased or leased for use as a component part of an aerospace industrial facility, then qualified investment in such property is determined in accordance with the four-year, six-year and eight-year useful life or primary lease term requirements of this subsection.

(C) Investment in property purchased, or leased, or placed in service or use prior to the first day of July, one thousand nine hundred ninety-eight.

(D) Investment in the purchase, acquisition or transfer of any facility or component thereof that was in service or use during the ninety days immediately prior to transfer of the title to such facility or component thereof, or to the commencement of the term of the lease of such facility or component thereof, unless upon application of the taxpayer, setting forth good and sufficient cause, the tax commissioner consents to waiving this ninety day period.

(E) Investment in any facility or component part thereof that was acquired by the taxpayer from a related person. The tax commissioner may waive this requirement if the facility was acquired from a related party for its fair market value, and the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(i) In whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(ii) Under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended, and in effect on the first day of January, one thousand nine hundred ninety-eight.

(F) Investment in or cost incurred for property owned or leased by the taxpayer and for which credit was previously
taken under article thirteen-c, article thirteen-d or thirteen-e of this chapter: Provided, That this paragraph shall not be con-
strued to prevent the transfer of this credit in the event of a mere change in the form of doing business of an eligible taxpayer, or transfer of credit to successors in business in accordance with section seven of this article.

(G) Repair costs, including costs or materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized.

(H) Investment in airplanes.

(I) Investment in property which is primarily used outside this state.

(J) Investment in property acquired incident to the purchase of a corporation, business organization or ongoing business or a substantial portion thereof through transfer of stock, ownership interests or assets thereof, or any other transfer, merger or purchase, unless for good cause shown, the tax commissioner consents to waiving this requirement: Provided, That this paragraph shall not be construed to prevent the transfer of this credit in the event of a mere change in the form of doing business of an eligible taxpayer, or transfer of credit to successors in business in accordance with section seven of this article.

(K) Investment in property acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended, and in effect on the first day of January, one thousand nine hundred ninety-nine.

(L) Investment in property acquired by one component member of a controlled group from another component member of the same controlled group: Provided, That, the tax commissioner can waive this requirement if the property was acquired from a related party for its then fair market value, and the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:
(i) In whole or in part by reference to the federal adjusted
basis of such property in the hands of the person from whom it
was acquired; or
(ii) Under Section 1014(e) of the United States Internal
Revenue Code of 1986, as amended, and in effect on the first
day of January, one thousand nine hundred ninety-nine.

CHAPTER 270

(S. B. 165 — By Senators Boley and Deem)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article thirteen-i, chapter
eleven of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to extending the expiration of the
Colin Anderson employee tax credit to the thirty-first day of
December, two thousand.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13I. TAX CREDIT FOR EMPLOYING FORMER EMPLOYEES
OF COLIN ANDERSON CENTER WHO LOST THEIR
JOBS DUE TO THE CLOSURE OF COLIN ANDERSON
CENTER.

§11-13I-2. Credit allowed; amount and duration of credit; recapture
of credit and effective date.

(a) There shall be allowed to eligible taxpayers a credit
against the taxes imposed in articles twenty-one, twenty-three
and twenty-four of this chapter. For the purpose of this article,
"eligible taxpayer" means a person, firm, partnership, corpora-
tion or other entity who employs a person or persons who lost
his or her job as a result of the closure of the Colin Anderson
Center. Such credit shall be in an amount equal to one half of
the cost to the state of unemployment compensation which shall
be determined based on the unemployment compensation cost
to the state of an employee who earns twenty-one thousand
dollars per year and shall be further determined as if such
person was unemployed for and drew a full sixteen weeks of
unemployment benefits. In the event an eligible taxpayer
employs more than one such person, the credit allowed shall be
multiplied by the number of persons so employed.

(b) The credit set forth in this article shall apply to personal
income tax liabilities, corporation net income tax liabilities and
business franchise tax liabilities arising after the thirty-first day
of December, one thousand nine hundred ninety-five. The credit
established in this article shall expire and may not be claimed
for those tax years ending after the thirty-first day of December,
two thousand, and in order to claim this credit an eligible
taxpayer shall have employed a person who lost his or her job
after the thirty-first day of December, one thousand nine
hundred ninety-five, as a result of the closing of Colin Ande-
son Center and must be employed after said date and prior to
the thirty-first day of December, one thousand nine hundred
ninety-nine.

(c) As a condition of receiving the credit established in this
article, the eligible taxpayer shall employ the person or persons
for a period of time at least equal to one year. In the event such
person is employed for less than one year the credit herein shall
be recaptured at the rate of twenty percent of the dollar value of
the credit for each month under twelve months the person
works.

CHAPTER 271

(Com. Sub. for S. B. 650 — By Senators Tomblin, Mr. President, Oliverio,
Kessler, Chafin, Craigo, Sprouse, McCabe, Plymale, Minard, Anderson, Minear,
McKenzie, Mitchell, Ross, Hunter, Snyder, Prezioso, Sharpe and Unger)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections three, five, six and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reauthorizing the neighborhood investment program act; stating definitions; establishing amount of credit allowed; permitting application of credit within five years; setting forth application of annual credit allowance; requiring forfeiture of unused credit; requiring independent program evaluation; and setting termination date for the act.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-5. Amount of credit allowed.
§11-13J-6. Application of annual credit allowance.
§11-13J-12. Program evaluation; expiration of credit; preservation of entitlement.


1 (a) General. — When used in this article, or in the administration of this article, terms defined in subsection (b) of this section shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this article.

7 (b) Terms defined.

8 (1) Affiliate. — The terms “affiliate” or “affiliates” include all concerns which are affiliates of each other when either directly or indirectly:

11 (A) One concern controls or has the power to control the other; or

13 (B) A third party or third parties control or have the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists,
(2) Capacity building. — The term "capacity building" means to generally enhance the capacity of the community to achieve improvements and to obtain the community services described in subparagraphs (i) through (v), inclusive, of the definition of that term, as set forth in subdivision (4) of this subsection. Capacity building includes, but is not limited to, improvement of the means, or capacity, to:

(i) Access, obtain and use private, charitable and governmental assistance programs, administrative assistance and private, charitable and governmental resources or funds;

(ii) Fulfill legal, bureaucratic and administrative requirements and qualifications for accessing assistance, resources or funds; and

(iii) Attract and direct political and community attention to needs of the community for the purpose of increasing access to and use of assistance, resources or funds for a given purpose, goal or need.

(3) Commissioner or tax commissioner. — The terms "commissioner" and "tax commissioner" are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his or her delegate.

(4) Community services. — "Community services" means services, provided at no charge whatsoever, of:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area; or

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens or in
(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area; or

(iv) Providing economic development assistance to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens; without regard to whether they are located in an economically disadvantaged area, or to individuals, groups or neighborhood or community organizations, in an economically disadvantaged area; or

(v) Providing community technical assistance and capacity building to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

(5) Compensation. — The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) Corporation. — The term “corporation” means any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.


(8) Delegate. — The term “delegate” in the phrase “or his or her delegate”, when used in reference to the tax commissioner, means any officer or employee of the tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.
(9) **Director or director of the West Virginia development office.** — The term "director" or "director of the West Virginia development office" means the director of the West Virginia office.

(10) **Economically disadvantaged area.** — The term "economically disadvantaged area" means:

(A) In a municipality — any area not exceeding fifteen square miles in West Virginia which contains any portion of an incorporated municipality and:

(i) In which area the aggregate poverty rate of persons residing in the area, based upon the most recent decennial census of population, is at least one hundred twenty-five percent of the statewide poverty rate; and

(ii) That is certified as an economically disadvantaged area by the West Virginia development office;

(B) In a rural area — any area not exceeding twenty-five square miles in West Virginia:

(i) Which area is located in a rural area and which contains no incorporated municipalities or portions thereof;

(ii) In which area the aggregate poverty rate of persons residing in the area, based upon the most recent decennial census of population, is at least one hundred twenty-five percent of the statewide poverty rate; and

(iii) That is certified as an economically disadvantaged area by the West Virginia development office;

(C) An economically disadvantaged area shall qualify as such only pursuant to a certification issued by the West Virginia development office. Such certifications issued by the West Virginia development office shall expire after the passage of five calendar years, unless specifically limited to a shorter time by specific order of the West Virginia development office, and no area shall hold the status of a certified economically disadvantaged area for a period of time greater than ten years, either consecutively or in the aggregate;
(D) The certification of an economically disadvantaged area shall be made on the basis of a determination by the development office that an area meets the poverty criteria established in paragraphs (A) and (B) of this subdivision;

(E) No economically disadvantaged area may be certified within twenty-five miles of any other certified economically disadvantaged area. Not more than six economically disadvantaged areas may hold the status of certified economically disadvantaged areas at any one time in this state;

(F) At least a majority of all economically disadvantaged areas holding designations as economically disadvantaged areas at any one time shall be located in rural areas; and

(G) Such certification shall be filed with the secretary of state and shall specifically set forth the boundaries of the economically disadvantaged area by both description and map, the date of certification of the area as an economically disadvantaged area, the date on which such certification will terminate and a statement of the director's findings as to the aggregate poverty rate of persons living in the certified economically disadvantaged area.

(11) *Economically disadvantaged citizen.* — The term "economically disadvantaged citizen" means a natural person, who during the current taxable year has, or during the immediately preceding taxable year had, an annual gross personal income not exceeding one hundred twenty-five percent of the federal designated poverty level for personal incomes, and who is a domiciliary and resident of this state.

(12) *Education.* — "Education" means any type of scholastic instruction to, or scholarship by, an individual that enables such individual to prepare for better life opportunities. Education does not include courses in physical training, physical conditioning, physical education, sports training, sports camps and similar training or conditioning courses (except for physical therapy prescribed by a physician or other person licensed to prescribe courses of medical treatment under West Virginia law).
(13) Eligible contribution. — 

(A) An eligible contribution consists of cash, publicly traded common or preferred stock representing ownership in a corporation valued at the closing price on the date of transfer, tangible personal property valued at its fair market value, real property valued at its fair market value: Provided, That any common or preferred stock contributed shall be sold by the project transferee within one hundred eighty days of its receipt; or a contribution of in kind professional services valued at seventy-five percent of fair market value;

(B) For purposes of this definition, the value of in kind professional services will not qualify as an eligible contribution unless the services are:

(i) Reasonably priced and valued, and reasonably necessary services customarily and normally provided by the contributor in the normal course of business to customers, clients or patients other than those encompassed by the project plan;

(ii) Not reimbursable, in whole or in part, from sources other than the tax credit provided under this article; and

(iii) Are services which are not available without cost elsewhere in the community;

(C) The term "professional services" means only those services provided directly by a physician licensed to practice in this state, those services provided directly by a dentist licensed to practice in this state, those services provided directly by a lawyer licensed to practice in this state, those services provided directly by a registered nurse, licensed practical nurse, dental hygienist or other health care professional licensed to practice in this state and those services provided directly by a certified public accountant or public accountant licensed to practice in this state;

(D) Minimum contribution. — No contribution of cash, stock, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value of less than five hundred dollars qualifies as an eligible contribution;
(E) Maximum contribution. — No contribution of cash, stock, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value in excess of two hundred thousand dollars qualifies as an eligible contribution; and

(F) Limitations. — Not more than twenty-five percent of total eligible contributions to a certified project may be in kind contributions. Not more than twenty-five percent of total eligible contributions made by any taxpayer to any certified project may be in kind contributions.

(14) Eligible taxpayer. —

(A) The term “eligible taxpayer” means any person subject to the taxes imposed by article twenty-one, twenty-three or twenty-four of this chapter which makes an eligible contribution to a qualified charitable organization pursuant to the terms of a certified project plan for the purpose of providing neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education for individuals not employed by the contributing taxpayer or an affiliate of the contributing taxpayer or a person related to the contributing taxpayer;

(B) “Eligible taxpayer” also includes an affiliated group of taxpayers if such group elects to file a consolidated corporation net income tax return under article twenty-four of this chapter and if one or more affiliates included in such affiliated group would qualify as an eligible taxpayer under paragraph (A) of this subdivision.

(15) Includes and including. — The terms “includes” and “including”, when used in a definition contained in this article, shall not be considered to exclude other things otherwise within the meaning of the term defined.

(16) Job training. — “Job training” means instruction to an individual that enables the individual to acquire vocational skills so as to become employable or to be able to seek a higher grade of employment.
(17) **Natural person or individual.** — The term “natural person” and the term “individual” means a human being. The terms “natural person” and “individual” do not mean, and specifically exclude any corporation, limited liability company, partnership, joint venture, trust, organization, association, agency, governmental subdivision, syndicate, affiliate or affiliation, group, unit or any entity other than a human being.

(18) **Neighborhood assistance.** — “Neighborhood assistance” means either:

(A) Furnishing financial assistance, labor, material and technical advice to aid in the physical or economic improvement of any part or all of an economically disadvantaged area; or

(B) Furnishing technical advice to promote higher employment in an economically disadvantaged area.

(19) **Neighborhood organization.** — “Neighborhood organization” means any organization:

(A) Which is performing community services, as defined in this section; and

(B) Which is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code.

(20) **Partnership and partner.** — The term “partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term “partner” includes a member in such a syndicate, group, pool, joint venture or organization.

(21) **Person.** — The term “person” includes any natural person, corporation, limited liability company or partnership.

(22) **Project transferee.** — The term “project transferee” means any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person that receives an eligible contribution or part of an eligible contribution from an eligible taxpayer for the
purpose of directly or indirectly providing neighborhood
assistance, community services or crime prevention, or for the
purpose of providing job training or education or other services
or assistance pursuant to a project plan. The project transferee
is typically the first entity or person receiving eligible contribu-
tions from eligible taxpayers under a project plan. However, in
the case of eligible contributions of in kind services or other
eligible contributions or portions thereof made pursuant to a
certified project plan directly to indigent, disadvantaged or
needy persons, economically disadvantaged citizens or other
persons or organizations under the sponsorship or auspices of
any neighborhood organization, qualified charitable organiza-
tion, charitable organization or other organization, entity or
person as a certified project participant, such eligible contribu-
tions shall be considered to have been made to the entity,
organization or person under whose sponsorship or auspices
such eligible contributions are made, and that entity, organiza-
tion or person is considered to be the project transferee with
relation to those eligible contributions. The project transferee
is the entity, organization or person that is liable under this
article for payment of the project certification fee to the West
Virginia development office. The term "project transferee"
shall mean and include any considered project transferee,
considered as such under the provisions of this article.

(23) Qualified charitable organization. — The term
"qualified charitable organization" means a neighborhood
organization, as defined in this section, which is the sponsor of
a project which has received certification by the director of the
West Virginia development office pursuant to the requirements
of this article: Provided, That no organization may qualify as a
qualified organization for purposes of this article if the organi-
ization is not registered with this state as required under the
solicitation of charitable funds act.

(24) Related person. — The term "related person" or
"person related to" a stated taxpayer means:

(A) An individual, corporation, partnership, affiliate,
association or trust or any combination or group thereof
controlled by the taxpayer; or
(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer: or

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this article, "control", with respect to a corporation means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation which entitles its owner to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c), other than paragraph (3) of such section, of the United States Internal Revenue Code, as amended.

(25) State fiscal year. — "State fiscal year" means a twelve-month period beginning on the first day of July and ending on the thirtieth day of June.

(26) Taxpayer. — The term "taxpayer" means any person subject to the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter (or any one or combination of the articles of this chapter).

(27) Technical assistance. — The term "technical assistance" means:

(A) Assistance in understanding, using and fulfilling the legal, bureaucratic and administrative requirements and qualifications which must be negotiated for the purpose of effectively accessing, obtaining and using private, charitable,
not-for-profit or governmental assistance, resources or funds, and maximizing the value thereof;

(B) Assistance provided by any person holding a license under West Virginia law to practice any licensed profession or occupation, whereby the person, in the practice of the profession or occupation, assists economically disadvantaged citizens or the persons in an economically disadvantaged area by:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area; or

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area; or

(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area; or

(iv) Providing economic development assistance to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, without regard to whether they are located in an economically disadvantaged area, or to individuals, groups or neighborhood or community organizations, in an economically disadvantaged area; or

(v) Providing community technical assistance and capacity building to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

§11-13J-5. Amount of credit allowed.
1. (a) Credit allowed. — Eligible taxpayers shall be allowed a credit against taxes imposed by this state, the application of which and the amount of which shall be determined as provided in this article.

(b) Amount of credit. — The amount of credit allowable is fifty percent of the amount of the taxpayer's "eligible contribution".

(c) Application of credit within five years. — The amount of credit allowable must be taken within a five-year period, beginning with the tax year in which the taxpayer irrevocably transfers its eligible contribution to the project plan transferee. Notwithstanding any other provision of this article to the contrary, the tax credit which a taxpayer receives under this article may not exceed one hundred thousand dollars in any tax year of the eligible taxpayer. A tax credit shall be allowable under this article only for the tax year of the eligible taxpayer in which the eligible contribution is irrevocably transferred to the project plan transferee, and for the next succeeding four tax years.

§11-13J-6. Application of annual credit allowance.

(a) In general. — The aggregate annual credit allowance for a current tax year is an amount equal to the sum of the following:

(1) The portion allowed under section five of this article for an eligible contribution placed into service or use during a prior tax year; plus

(2) The portion allowed under section five of this article for an eligible contribution placed into service or use during the current tax year.

(b) Application of credit allowance. — The amount determined under subsection (a) of this section shall be allowed as a credit for tax years ending on and after the first day of July, one thousand nine hundred ninety-six, as follows:

(1) Business franchise taxes. —

The amount determined under subsection (a) of this section shall be applied to reduce up to fifty percent of the taxes
imposed by article twenty-three of this chapter for the tax year 
(determined after application of the credits against tax provided 
in section seventeen of said article, but before application of 
any other allowable credits against tax).

(2) Corporation net income taxes. — After application of 
subdivision (1) of this subsection, any unused credit shall next 
be applied to reduce up to fifty percent of the taxes imposed by 
article twenty-four of this chapter, for the tax year (determined 
before application of allowable credits against tax).

(3) Personal income taxes. —

(A) If the eligible taxpayer is an electing small business 
corporation (as defined in Section 1361 of the United States 
Internal Revenue Code), a limited liability company treated as 
a partnership for purposes of the federal income tax, a partner-
ship or a sole proprietorship, then any unused credit (after 
application of subdivisions (1) and (2) of this subsection) shall 
be allowed as a credit against up to fifty percent of the taxes 
imposed by article twenty-one of this chapter on income of 
proprietors, partners or shareholders, subject to the limitations 
set forth in parts (B) and (C) of this subdivision.

(B) Electing small business corporations, partnerships and 
other unincorporated organizations shall allocate the credit 
allowed by this article among the members thereof in the same 
manner as profits and losses are allocated for the tax year.

(C) No credit may be allowed under this section against any 
tax due under article twenty-one of this chapter on any wage, 
salary or other compensation paid to any employee of any 
electing small business corporation, limited liability company, 
partnership, other unincorporated organization or sole propri-
etership or against any amount of tax due on any wage, salary 
or other compensation reported on federal form W2.

(c) Unused credit forfeited. — If any credit to an eligible 
taxpayer remains after application of subsections (a) and (b) of 
this section, the amount thereof may be carried forward no 
more than four years from the tax year in which the contribu-
tion was made. Unused credits of an eligible taxpayer may not 
be carried forward beyond the time limits imposed under
section five of this article and the total maximum aggregate tax
credits certified in any state fiscal year may not exceed two
million dollars.

(d) Addition of deductions, decreasing adjustments or
decreasing modifications taken in determining taxable income
for which credit is taken. — Any deduction, decreasing
adjustment or decreasing modification taken by any taxpayer in
determining federal taxable income which affects West Virginia
taxable income or in determining West Virginia taxable income
under article twenty-one or twenty-four of this chapter for the
taxable year for any charitable contribution, or payment or
portion thereof, which qualifies as an eligible contribution
under this article and for which credit is claimed, shall be added
to West Virginia taxable income in determining the tax liability
of the taxpayer under article twenty-one or twenty-four of this
chapter, as appropriate, before application of the credit allowed
under this article for the taxable year.

(e) Annual limit. — The aggregate annual credit allowance
to any taxpayer may not exceed one hundred thousand dollars
in any tax year.

§11-13J-12. Program evaluation; expiration of credit; preserva-
tion of entitlement.

On or before the fifteenth day of December, two thousand
one, the director shall secure an independent review of the
neighborhood investment program created by this article and
present the findings to the Legislature. Unless sooner termi-
nated by law, the neighborhood investment program act shall
terminate on the first day of July, two thousand two. No
entitlement to the tax credit under this article shall result from
any contribution made to any certified project after the first day
of July, two thousand two, and no credit shall be available to
any taxpayer for any contribution made after that date. Taxpay-
ers which have gained entitlement to the credit pursuant to
eligible contributions made to certified projects prior to the first
day of July, two thousand two, shall retain that entitlement and
apply the credit in due course pursuant to the requirements and
limitations of this article.
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 eight-g, relating to providing a tax credit from the personal income tax to encourage preservation of West Virginia’s historic houses and neighborhoods.

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 eight-g, to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8g. Credit for qualified rehabilitated residential buildings investment.

(a) A credit against the tax imposed by the provisions of this article is allowed for residential certified historic structures.

The credit is equal to twenty percent of eligible rehabilitation expenses in the rehabilitation of a certified historic structure.

The credit is available for residential certified historic structures located in this state that are reviewed by the West Virginia division of culture and history and designated by the national park service, United States department of the interior as “certified historic structures” as defined in 26 U.S.C. §47.

(b)(1) “Certified historic structure” means any building located in this state that is listed individually in the national register of historic places or located in a registered historic district, reviewed by the West Virginia division of culture and
(2) "Certified rehabilitation" means any rehabilitation of a certified historic structure that is reviewed by the West Virginia division of culture and history, and certified by the national park service as being consistent with the historic character of the property and, where applicable, the district in which it is located.

(3) "Eligible rehabilitation expenses" means expenses incurred in the material rehabilitation of a certified historic structure and added to the property’s basis for income tax purposes.

(4) "Historic district" means any district that is listed in the national register of historic places or designated under a state or local statute which has been certified as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district and which is certified as substantially meeting all of the requirements for listing of districts in the national register of historic places.

(5) "Historic preservation application" means application forms published by the national park service, United States department of the interior, Parts 1, 2 and 3, Form No. 1-168, or its successor.

(6) "Material rehabilitation" means improvements or reconstruction consistent with the “Secretary of the Interior’s Standards for Rehabilitation,” the actual cost of which amounts to at least twenty percent of the assessed value of a certified historic structure for ad valorem real estate tax purposes for the year before such rehabilitation expenses were incurred, exclusive of the assessed value of the land.

(7) "Residential certified historic structure" means any certified historic structure that is:

(A) Classified as Class II property for levy purposes pursuant to section five, article eight, chapter eleven of this code for the year in which the rehabilitation expenses are incurred; or
(B) Not classified as Class II property for levy purposes for the year in which the rehabilitation expenses are incurred but will satisfy the requirements for classification as Class II for real property assessment purposes pursuant to section five, article eight, chapter eleven of this code as of the first day of July of the year following the year in which the rehabilitation expenses are incurred.

(8) "Secretary of the interior standards" means standards and guidelines adopted and published by the national park service, United States department of the interior, for rehabilitation of historic properties.

(9) "State historic preservation office" means the state official designated by the governor pursuant to provisions in the National Historic Preservation Act of 1966, as amended and further defined in section six, article one, chapter twenty-nine of this code.

(c)(1) Application and processing procedures for provisions of this section shall be the same or substantially similar as any required under provisions of 36 C.F.R., Part 67, and to the extent applicable 26 C.F.R., Part 1. Obtaining historic preservation certification by proper application automatically qualifies the applicant to be considered for tax credits under this section.

(2) The state historic preservation officer's role in the application procedure shall be identical, or substantially similar, to that in 36 C.F.R., Part 67 and 26 C.F.R., Part 1, to the extent applicable.

(d) All standards including the secretary of the interior standards and provisions in 36 C.F.R., Part 67 and 26 C.F.R., Part 1 that apply to tax credits available from the United States government apply to this section, except that the property eligible for the tax credit under this article may not be income producing property or property for which depreciation is allowed under 26 U.S.C. §168.

(e) If the amount of the credit for qualified rehabilitated residential buildings investment exceeds the taxpayer's tax liability for the taxable year to which the credit applies, the
amount that exceeds the tax liability for the taxable year may be carried over for credits against the income taxes of the taxpayer in each of the ensuing five tax years or until the full credit is used, whichever occurs first. In no event may the amount of the credit taken in a taxable year exceed the tax liability due for the taxable year.

(f) The tax commissioner shall require disclosure of information regarding credits granted pursuant to this section in accordance with the provisions of section five-s, article ten of this chapter. The commissioner of the West Virginia division of culture and history may establish by rule the requirements to implement the credit for qualified rehabilitated residential buildings investment, including reasonable fees to defray the necessary expenses of administration of the credit.

(g) The credit authorized by this section shall be available for tax years beginning after the thirty-first day of December, one thousand nine hundred ninety-nine.

CHAPTER 273

(S. B. 143 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 18, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, one thousand nine hundred ninety-seven, but prior to the first day of January, one thousand nine hundred ninety-nine, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether such changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred ninety-nine, shall be given any effect.

(b) Medical savings accounts. — The term “taxable trust” does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant to said sections are not “wages” for purposes of withholding under section seventy-one of this article.

(c) Surtax. — The term “surtax” means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code, and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter, which are collected by the tax commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section enacted in the year one thousand nine hundred ninety-nine shall
be retroactive to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, one thousand nine hundred ninety-eight, the law in effect for each of those years shall be fully preserved as to such year, except as provided in this section.

CHAPTER 274

(Com. Sub. for H. B. 2693 — By Delegates Hunt, Damron, Compton, and Tillis)

[Passed March 12, 1999; 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, relating to authorizing a reduction of the federal gross income for the premiums paid for a qualified long-term care insurance policy.

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 to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

*§11-21-12a. Additional modification reducing federal adjusted gross income.

(a) 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.

* Clerk’s Note: This section was also amended by SB 431 (Chapter 95), which passed subsequent to this act.
(b) For taxable years beginning on and after the first day of January, two thousand, in addition to the amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, any payment made during the taxable year for premiums for a qualified long-term care insurance policy as defined in section four, article fifteen-a, chapter thirty-three of this code that offers coverage to either the taxpayer, the taxpayer's spouse, parent or a dependent as defined in section 152 of the United States Internal Revenue Code of 1986, as amended, is 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 275

(S. B. 358 — By Senators Craigo, Bowman, Bailey, Jackson, Fanning, Sharpe, Minard, Helmick, Ross, Anderson, Love, Minear, Sprouse, Walker, Chafin, Dittmar, Hunter, Kessler, Tomblin, Mr. President, and Oliverio)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to real estate transfer taxes; exempting certain transfers between grandparent and grandchild; exempting certain transfers made pursuant to conversions to limited liability companies from corporations, partnerships, limited partnerships or trusts; exempting certain transfers made pursuant to mergers of limited liability companies, partnerships, limited partnerships, testamentary or inter vivos trusts; and defining the term limited liability company.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty-two, chapter eleven of the code of West Virginia one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.

§11-22-1. Definitions.

1 As used in this chapter:

2 (1) "Association" means a partnership, limited partnership or any other form of unincorporated enterprise, owned or conducted by two or more persons.

3 (2) "Corporation" means a corporation or joint-stock association, organized under the laws of this state, the United States or any other state, territory or foreign country or dependency including, but not limited to, banking institutions.

4 (3) "Commissioner" means the state tax commissioner.

5 (4) "Document" means any deed, or instrument or writing by which any real property within this state or any interest in real property is granted, conveyed or otherwise transferred to the grantee, purchaser or any other person; but does not include wills, transfer of real property where the value of the property transferred is one hundred dollars or less, testamentary or inter vivos trusts, deeds of partition, deeds made pursuant to mergers of corporations, limited liability companies, partnerships, limited partnerships, testamentary or inter vivos trusts, deeds made pursuant to conversions to limited liability companies from corporations, partnerships, limited partnerships or trusts, deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock, leases, transfers between husband and wife, transfers between parent and child or transfers between parent and child and his or her spouse, without consideration, transfers between grandparent and grandchild or transfers between grandparent and grandchild and his or her spouse, without consideration, transfers without consideration between a principal and straw party for any purpose, gifts to or transfers from or between voluntary charitable or educational associations or trustees of voluntary charitable or educational associations and like nonprofit corporations having the same or similar
purposes, quitclaim or corrective deeds without consideration, transfers to or from the United States, the state of West Virginia, or to or from any of their instrumentalities, agencies or political subdivisions, by gift, dedication, deed or condemnation proceedings, or mortgages or deeds of trust given as security for a debt.

(5) “Limited liability company” means a limited liability company organized under the laws of this state, the United States or by any other state, territory or the District of Columbia.

(6) “Person” means every natural person, association or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term “person” as applied to associations, means the partners or members of the association, and, as applied to corporations, the officers of the corporation.

(7) “Transaction” means the delivering, accepting or presenting for recording of a document.

(8) “Value” means in the case of any document not a gift, the amount of the full actual consideration for the document, paid or to be paid, including the amount of any lien or liens assumed; in the case of a gift, or any other document without consideration, the actual monetary value of the property conveyed or transferred. In the event any document includes real property or any interest in real property lying outside the state of West Virginia or includes personal property, value is the proportion of the consideration paid in case of the transfer for consideration, or the proportion of the true and actual value in case of a gift, which the actual value of the real property located in West Virginia bears to the total actual value of all the property, real or personal, transferred by the document. The value as defined in this subdivision shall be stated in the declaration of consideration or value provided for in section six of this article.
AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, one thousand nine hundred ninety-seven, but prior to the first day of January, one thousand nine hundred ninety-nine, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for
15 federal income tax purposes, whether such changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred ninety-nine, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the "Federal Tax Reform Act of 1986" and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the "Federal Tax Reform Act of 1986" was enacted, that were not amended or repealed by the "Federal Tax Reform Act of 1986". Except when inappropriate, any references in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 shall include reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year one thousand nine hundred ninety-nine shall be retroactive to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, one thousand nine hundred ninety-eight, the law in effect for each of those years shall be fully preserved as to such year, except as provided in this section.

CHAPTER 277
(S. B. 522 — By Senator Tomblin, Mr. President)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three-f, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the tax credit for qualified historic rehabilitated buildings investment.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23f. Credit allowed for specific taxable years.

1 Subject to the provisions of section twenty-three-e of this article, the credit authorized in section twenty-three-a of this article, for investment in a rehabilitated building made by a taxpayer in any taxable year beginning on the first day of January, one thousand nine hundred ninety-five, and thereafter, shall be allowed against the tax imposed by this article in the applicable taxable year. The tax commissioner shall require disclosure of information regarding the credits allowed in section twenty-three-a of this article in accordance with the provisions of section five-s, article ten of this chapter.

CHAPTER 278

(Com. Sub. for S. B. 503 — By Senator Prezioso)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one-b, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to technology; and defining terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. CHIEF TECHNOLOGY OFFICER.

§5-1B-2. Definitions.
As used in this article:

(a) "Information systems" means computer-based information equipment and related services designed for the automated transmission, storage, manipulation and retrieval of data by electronic or mechanical means;

(b) "Information technology" means data processing and telecommunications hardware, software, services, supplies, personnel, maintenance and training, and includes the programs and routines used to employ and control the capabilities of data processing hardware;

(c) "Information equipment" includes central processing units, front-end processing units, minicomputers, microprocessors and related peripheral equipment such as data storage devices, networking equipment, services, routers, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters and equipment and systems for computer networks;

(d) "Related services" include feasibility studies, systems design, software development and time-sharing services whether provided by state employees or others;

(e) "Telecommunications" means any transmission, emission or reception of signs, signals, writings, images or sounds of intelligence of any nature by wire, radio or other electromagnetic or optical systems. The term includes all facilities and equipment performing those functions that are owned, leased or used by the executive agencies of state government;

(f) "Chief technology officer" means the person holding the position created in section three of this article and vested with authority to assist state spending units in planning and coordinating information systems that serve the effectiveness and efficiency of the individual state spending units, and further the overall management goals and purposes of government; and

(g) "Experimental program to stimulate competitive research" (EPSCoR) means the West Virginia component of the
national EPSCoR program which is designed to improve the
competitive research and development position of selected
states through investments in academic research laboratories
and laboratory equipment. The recognized West Virginia
EPSCoR, which is part of the governor's office of technology,
is the responsible organization for the coordination and submis-
sion of proposals to all federal agencies participating in the
EPSCoR program.

CHAPTER 279

(Com. Sub. for H. B. 2924 — By Delegates Capito, Rowe,
Hutchins, Mahan, Smirl and Webb)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-four of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding
there to a new article, designated article two-e, relating to regulat­
ing transfers of intrastate phone service; limiting transfer of phone
services by telephone public utilities; establishing disclosure
requirements for telephone public utilities for transfer of phone
services; providing for third-party conformation of transfers;
establishing criteria for third-party verification companies and
conformation procedures for service transfers; prohibiting
disclosure of subscriber information for marketing purposes;
creating civil remedy for prohibited release; excepting certain
transactions from this section; providing liability to prior phone
service provider and subscribers for unauthorized charges;
providing that this section does not limit any other remedies;
providing conformity with federal requirements; and providing
that public service commission has certain rulemaking and
enforcement authority.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, be amended by adding
there to a new article, designated article two-e, to read as follows:
ARTICLE 2E. REQUIREMENTS FOR PHONE SERVICE SALES.

§24-2E-1. Transfer of phone service providers.

(a) No telephone public utility may submit a change on behalf of a subscriber in the subscriber's selection of a provider of telephone service, except in accordance with the requirements of this section and the rules adopted by the public service commission.

(1) The telephone public utility, its representatives or agents shall thoroughly inform the subscriber of the nature and extent of the service being offered.

(2) The telephone public utility, its representatives or agents shall specifically establish whether the subscriber intends to make any change in his or her telephone service provider, and explain any charges associated with that change. The public service commission may by rule establish additional requirements for disclosure of services or fees and any additional appropriate requirements relating to disclosure or cancellation of services, as the commission deems appropriate.

(3) Except as provided in subsection (b), the subscriber's decision to change his or her telephone service provider may be confirmed by an independent third-party verification company. For purposes of this provision, the confirmation by a third-party verification company shall be made as follows:

(A) The third-party verification company shall meet each of the following criteria:

(i) Not be directly or indirectly managed, controlled, or directed, or owned, wholly or in part, by the telephone public utility or its marketing agent;

(ii) Operate from facilities physically separate from those of the telephone public utility that seeks to provide the subscriber's new service; and

(iii) Not derive commissions or compensation based upon the number of sales confirmed.

(B) The telephone public utility seeking to verify the sale
shall do so by connecting the subscriber by telephone to the third-party verification company or by arranging for the third-party verification company to call the subscriber to confirm the sale.

(b) As an alternative to third-party verification, the telephone public utility may authenticate the transaction by one of the following methods:

(i) Verifying the subscriber's change in his or her telephone service provider by obtaining the subscriber's signature on a document fully explaining the nature and extent of the action. The document shall be a separate document whose sole purpose is to explain the nature and extent of the action; or

(ii) Obtaining the subscriber's authorization through an electronic means that takes the information, including the calling number, and confirms the change to which the subscriber has given his or her consent; or

(iii) Obtaining the subscriber's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data.

The verification record shall be available to the subscriber upon request. Information obtained from the subscriber through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved subscriber against the person or persons responsible for the violation.

(4) Where the telephone public utility obtains a written order for service, the document shall thoroughly inform the subscriber of the nature and extent of the action in accordance with this section and the rules adopted by the public service commission.

(5) The telephone public utility shall retain a record of the verification of the sale for at least two years. These records shall be made available to the subscriber, the Attorney General, or the commission upon request.
(c) Any telephone public utility that violates the provisions of this section shall be liable to the telephone public utility previously selected by the subscriber. The violating telephone public utility shall refund to the properly authorized telephone public utility all charges collected by the violating telephone public utility. The properly authorized telephone public utility shall then refund any overcharges due the subscriber. The public service commission shall adopt regulations to govern credits to subscribers pursuant to subsection (f) of this section.

(d) The remedies provided by this section are in addition to any other remedies available by law. Violations of this section shall be subject to orders and other actions consistent with the public service commission's authority as provided in this chapter. This section is intended to supplement and be in addition to federal laws and regulations regulating phone transactions.

(e) Nothing in this section shall be construed to impose any obligation or liability on a local exchange telephone public utility that executes, in good faith, an order for a change in a subscriber's telephone service provider submitted to it by the subscriber or by another telephone public utility.

(f) The public service commission shall promulgate rules consistent with and necessary to effectuate the purposes of this section.

CHAPTER 280

(H. B. 3034 — By Delegates Hines, L. White, Mahan, Willis, Coleman, Amores and Capito)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-two, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the offense of
wrongful injury to timber; and making the first violation a misdemeanor; second and subsequent violations deemed a felony; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-52. Wrongful injuries to timber; criminal penalties.

(a) Any person who willfully and maliciously and with intent to do harm unlawfully enters upon the lands of another, cuts down, injures, removes or destroys any timber, without the permission of the owner or his or her representative is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than three times the value of timber injured, removed or destroyed, or confined in the county or regional jail for thirty days, or both: Provided, That if the timber is valued at one thousand dollars or less, the fine shall be no more than one thousand dollars: Provided, however, That a person convicted of a second or subsequent violation of the provisions of this section shall be guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one nor more than three years, or fined not more than three times the value of the timber injured, removed or destroyed, or both fined and confined.

(b) The necessary trimming and removal of timber to permit the construction, repair, maintenance, cleanup and operations of pipelines and utility lines and appurtenances of public utilities, public service corporations and to aid registered land surveyors and professional engineers in the performance of their professional services, and municipalities, and pipeline companies, or lawful operators and product purchasers of natural resources other than timber shall not be deemed a willful and intentional cutting down, injuring, removing or destroying of timber.
(c) The necessary trimming and removal of timber for boundary line maintenance, for the construction, maintenance and repair of streets, roads and highways or for the control and regulation of traffic thereon by the state and its political subdivisions or registered land surveyors and professional engineers shall not be deemed a willful and intentional cutting down, injuring, removing or destroying of timber.

(d) No fine or imprisonment imposed pursuant to this section shall be construed to limit any cause of action by a landowner for recovery of damages otherwise allowed by law.

CHAPTER 281

(H. B. 3031 — By Delegates Leach, Compton, Ashley, Thompson, Fielschauer, Laird and Miller)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-a, all relating to appropriations of tobacco settlement money; creating two funds for the deposit of tobacco settlement moneys; authorizing the expenditure of the interest from the West Virginia tobacco settlement medical trust fund; authorizing certain expenditures from the “Tobacco Settlement Fund” only upon legislative appropriation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-1. Legislative findings and purpose.
§4-11A-2. Receipt of settlement funds and required deposit in West Virginia tobacco settlement medical trust fund.
§4-11A-3. Receipt of settlement funds and required deposit in the West Virginia tobacco settlement fund.

§4-11A-1. Legislative findings and purpose.

(a) On the twenty-third day of November, one thousand nine hundred ninety-eight, tobacco product manufacturers entered into a settlement agreement with the state. This “master settlement agreement” releases those manufacturers from past, present and specific future claims against them in return for payment of annual sums of money to the state, obligates the manufacturers to change their advertising and marketing practices, and requires the establishment by the manufacturers of a national foundation for the interests of public health.

(b) The revenues received pursuant to the master settlement agreement are directly related to the past, present and future costs incurred by the state for the treatment of tobacco related illnesses. The purpose of this article is to preserve the revenues received from the settlement.

(c) The receipt of funds in accordance with the master settlement agreement shall be deposited only in accordance with the provisions of this article.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia tobacco settlement medical trust fund.

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

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

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

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

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

(c) The moneys from the principal in the trust fund may not be expended for any purpose. The moneys in the trust fund resulting from interest earned on the moneys in the fund and the return on investments of the moneys in the fund shall be available only upon appropriation by the Legislature as part of the state budget and expended in accordance with the provisions of section three of this article.

§4-11A-3. Receipt of settlement funds and required deposit in the West Virginia tobacco settlement fund.

(a) There is hereby created in the state treasury a special revenue account, designated the "Tobacco Settlement Fund", which shall be an interest bearing account and may be invested in the manner permitted by the provisions of article six, chapter twelve of this code, with the interest income a proper credit to the fund. Unless contrary to federal law, fifty percent of all revenues received pursuant to the master settlement agreement shall be deposited in this fund. These funds shall be available only upon appropriation by the Legislature as part of the state budget: Provided, That for the fiscal year two thousand, the first five million dollars received into the fund shall be transferred to the public employees insurance reserve fund created in article two, chapter five-a of this code.

(b) Appropriations from the tobacco settlement fund are limited to expenditures for the following purposes:
16 (1) Reserve funds for continued support of the programs
17 offered by the public employees insurance agency established
18 in article sixteen, chapter five of this code;
19 (2) Funding for expansion of the federal-state medicaid
20 program as authorized by the Legislature or mandated by the
21 federal government;
22 (3) Funding for public health programs, services and
23 agencies; and
24 (4) Funding for any state owned or operated health facili-
25 ties.
26 (c) Notwithstanding the provisions of section two, article
27 two, chapter twelve of this code, moneys within the tobacco
28 settlement trust fund may not be redesignated for any purpose
29 other than those set forth in this section.

CHAPTER 282

(S. B. 372 — By Senators Tomblin, Mr. President, Walker, Prezioso, Plymale, Sharpe, Wooton, Ross, Hunter, McCabe, Redd, Snyder, Unger, Sprouse, Jackson, Craigo, Bowman, Schoonover, Dittmar, Edgell, Fanning, Minard, Bailey, Helmick, Kessler and Ball)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, by adding thereto
a new article, designated article nine-b, relating to implementation of the tobacco master settlement agreement; providing for escrow of funds; and setting civil penalties.

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 nine-b, to read as follows:

ARTICLE 9B. IMPLEMENTING TOBACCO MASTER SETTLEMENT
AGREEMENT.
§16-9B-1. Findings and purpose.
§16-9B-2. Definitions.
§16-9B-3. Requirements.

§16-9B-1. Findings and purpose.

(a) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the state. Under certain health-care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(e) On the twenty-third day of November, one thousand nine hundred ninety-eight, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the “master settlement agreement”, with the state. The master settlement agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the state (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing
underage smoking.

(f) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

§16-9B-2. Definitions.

(a) “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the master settlement agreement.

(b) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns,” “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term “person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) “Allocable share” means allocable share as that term is defined in the master settlement agreement.

(d) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler,
or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as that term is described in this subsection. The term "cigarette" includes "roll-your-own", which means any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of cigarette, 0.09 ounces of "roll-your-own" tobacco shall constitute one individual cigarette.

(e) "Master settlement agreement" means the settlement agreement (and related documents) entered into on the twenty-third day of November, one thousand nine hundred ninety-eight, by the state and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally- or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with subdivision (2), subsection (b), section three of this article.

(g) "Released claims" means released claims as that term is defined in the master settlement agreement.

(h) "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.

(i) "Tobacco product manufacturer" means an entity that after the date of enactment of this article directly (and not exclusively through any affiliate):

(1) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the master settlement
agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);  

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or  

(3) Becomes a successor of an entity described in subdivision (1) or (2) of this subsection.  

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within subdivision (1), (2) or (3).  

(j) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs or "roll-your-own" tobacco containers bearing the excise tax stamp of the state. The tax commissioner shall propose legislative rules for promulgation, in accordance with article three, chapter twenty-nine of this code, as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.  

§16-9B-3. Requirements.  

Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this article shall do one of the following:  

(a) Become a participating manufacturer (as that term is defined in section II(jj) of the master settlement agreement) and generally perform its financial obligations under the master settlement agreement; or
b) (1) Place into a qualified escrow fund by the fifteenth day of April of the year following the year in question the following amounts, adjusted for inflation:

   (A) For the year one thousand nine hundred ninety-nine: $.0094241 per unit sold after the date of enactment of this article;
   (B) For the year two thousand: $.0104712 per unit sold;
   (C) For each of the years two thousand one and two thousand two: $.0136125 per unit sold;
   (D) For each of the years two thousand three through two thousand six: $.0167539 per unit sold; and
   (E) For the year two thousand seven or each year thereafter: $.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

   (A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this paragraph: (i) In the order in which they were placed into escrow; and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

   (B) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state’s allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or
(C) To the extent not released from escrow under paragraph 
(A) or (B) of this subdivision, funds shall be released from 
escrow and revert back to the tobacco product manufacturer 
twenty-five years after the date on which they were placed into 
escrow.

(3) Each tobacco product manufacturer that elects to place 
funds into escrow pursuant to this subsection shall annually 
certify to the attorney general that it is in compliance with this 
subsection. The attorney general may bring a civil action on 
behalf of the state against any tobacco product manufacturer 
that fails to place into escrow the funds required under this 
section. Any tobacco product manufacturer that fails in any year 
to place into escrow the funds required under this section shall:

(A) Be required within fifteen days to place such funds into 
escrow as shall bring it into compliance with this section. The 
court, upon a finding of a violation of this subsection, may 
impose a civil penalty, to be paid to the general fund of the 
state, in an amount not to exceed five percent of the amount 
improperly withheld from escrow per day of the violation and 
in a total amount not to exceed one hundred percent of the 
original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within 
fifteen days to place such funds into escrow as shall bring it into 
compliance with this section. The court, upon a finding of a 
knowing violation of this subsection, may impose a civil 
penalty, to be paid to the general fund of the state, in an amount 
not to exceed fifteen percent of the amount improperly withheld 
from escrow per day of the violation and in a total amount not 
to exceed three hundred percent of the original amount impro-
perly withheld from escrow; and

(C) In the case of a second knowing violation, be prohibited 
from selling cigarettes to consumers within the state (whether 
directly or through a distributor, retailer or similar intermedi-
ary) for a period not to exceed two years.

Each failure to make an annual deposit required under this 
section shall constitute a separate violation.
AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine-c, relating to the creation of a state tobacco growers’ settlement board; setting forth legislative findings; defining terms; establishing the membership of and positions on the board; and duties and responsibilities of the state tobacco grower’s settlement board.

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 nine-c, to read as follows:

ARTICLE 9C. STATE TOBACCO GROWERS' SETTLEMENT BOARD.

§16-9C-1. Findings and purpose.

(a) Cigarette smoking presents serious public health concerns as well as serious financial concerns for the state. In response, the state pursued legal claims against leading tobacco product manufacturers to recover damages caused by the public health and financial consequences of cigarette smoking. On the twenty-third day of November, one thousand nine hundred ninety-eight, leading United States tobacco product manufacturers entered into a settlement agreement, entitled “master settlement agreement”, with the state. The master settlement
agreement obligates these manufacturers to pay substantial
sums to the state in exchange for a release of past, present and
future claims against them.

(b) The tobacco growers of the state are not a party or a
beneficiary of the master settlement agreement.

(c) In view of the master settlement agreement, similar
agreements between other states and tobacco product manufac-
turers, and the heightened public awareness and scrutiny of the
dangers associated with cigarette smoking, the state has a
significant interest in protecting tobacco growers from negative
economic and financial consequences arising from changes in
the cigarette industry, such as decreased consumption, demand
and prices.

(d) On the twenty-first day of January, one thousand nine
hundred ninety-nine, leading United States tobacco product
manufacturers agreed to establish a national tobacco commu-
nity trust, for the sole benefit of tobacco growers, payable over
a twelve-year period, beginning in the year one thousand nine
hundred ninety-nine. The tobacco growers in this state (and
thirteen other states) are eligible to participate in the national
tobacco community trust upon the creation of a state tobacco
grower board, which will consummate a tobacco grower
settlement with the tobacco product manufacturers.

§16-9C-2. Definitions.

(a) "Cigarette" means any product that contains nicotine, is
intended to be burned or heated under ordinary conditions of
use, and consists of or contains: (1) Any roll of tobacco
wrapped in paper or in any substance not containing tobacco; or
(2) tobacco, in any form, that is functional in the product,
which, because of its appearance, the type of tobacco used in
the filler, or its packaging and labeling, is likely to be offered
to, or purchased by, consumers as a cigarette; or (3) any roll of
tobacco wrapped in any substance containing tobacco which,
because of its appearance, the type of tobacco used in the filler,
or its packaging and labeling, is likely to be offered to, or
purchased by, consumers as a cigarette as that term is described
in this subsection. The term "cigarette" includes "roll-your-
own" which means any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of cigarette, 0.09 ounces of “roll-your-own” tobacco shall constitute one individual cigarette.

(b) “Master settlement agreement” means the settlement agreement (and related documents) entered into on the twenty-third day of November, one thousand nine hundred ninety-eight, by the state and leading United States tobacco product manufacturers.

(c) “National tobacco community trust” means the trust fund agreed to by leading United States tobacco product manufacturers, to be established and funded by them for the sole benefit of state tobacco growers.

(d) “Tobacco grower” means a person who has a direct financial interest in planting, cultivating and harvesting tobacco for sale. Tobacco grower includes a person who possesses a quota to market tobacco as administered by the United States Department of Agriculture.

(e) “Trust” means the national tobacco community trust as defined in subsection (c) of this section.

§16-9C-3. Creation of board.

There is hereby created a board to be known as the “state tobacco growers’ settlement board” consisting of three members: the governor, the attorney general and the commissioner of agriculture, or their designees. The governor or his or her designee shall serve as the chair, the commissioner of agriculture or his or her designee shall serve as the vice chair, and the attorney general or his or her designee shall serve as the secretary.

§16-9C-4. Duties and responsibilities of the state tobacco grower board.

The duties and responsibilities of the board shall include, but are not limited to:
(a) The consummation of a settlement with leading United States tobacco product manufacturers for the exclusive benefit of state tobacco growers;

(b) The execution of all necessary written agreements relative to the national tobacco community trust to ensure state tobacco growers’ receipt of funds directly from the trust;

(c) Consultation with tobacco growers within the state in order to determine how funds allocated by the national tobacco community trust shall be distributed among state tobacco growers to compensate them for the adverse effects of decreased consumption, demand and price for cigarettes;

(d) The submission of a plan to the national tobacco community trust identifying state tobacco growers and the distribution of trust funds to state tobacco growers; and

(e) The certification of instructions annually to the national tobacco community trust regarding distribution of funds from the trust directly to the state tobacco growers during the twelve year payment period, beginning in the year one thousand nine hundred ninety-nine.

CHAPTER 284

(Com. Sub. for H. B. 2277 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]
That section eight, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-8. Tourism commission created; members, appointment and expenses.

(a) There is hereby created within the West Virginia development office an independent tourism commission, which is a body corporate and politic, constituting a public corporation and government instrumentality. Membership on the council shall consist of thirteen members:

1. Nine members to be appointed by the governor, with the advice and consent of the Senate, representing participants in the state’s tourism industry. At least seven of the members shall be from the private sector. Of the nine members so appointed, one shall represent a convention and visitors bureau and another shall be a member of a convention and visitors bureau. In making the appointments the governor may select from a list provided by the West Virginia hospitality and travel association of qualified applicants. Of the nine members so appointed, no more than three shall be from each congressional district within the state and shall be appointed to provide the broadest geographic distribution which is feasible;

2. One member to be appointed by the governor from the membership of the council for community and economic development created pursuant to the provisions of section two of this article;

3. One member to be appointed by the governor to represent public sector nonstate participants in the tourism industry within the state;

4. The secretary of transportation or his or her designee, ex officio; and

5. The director of the division of natural resources or his or her designee, ex officio.

(b) Each member appointed by the governor shall serve staggered terms of four years. Any member whose term has
expired shall serve until his or her successor has been ap-
pointed. Any person appointed to fill a vacancy shall serve only
for the unexpired term. Any member shall be eligible for
reappointment. In cases of vacancy in the office of member,
such vacancy shall be filled by the governor in the same manner
as the original appointment.

(c) Members of the commission shall not be entitled to
compensation for services performed as members. A majority
of these members shall constitute a quorum for the purpose of
conducting business. The governor shall appoint a chair of the
commission for a term to run concurrent with the term of the
office of the member appointed to be the chair. The chair is
eligible for successive terms in that position.

CHAPTER 285

(H. B. 2294 — By Delegates Johnson, Fleischauer,
Hutchins, Rowe, Tillis, Riggs and Trump)

[Passed February 17, 1999; in effect March 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article three, chapter
seventeen-c of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend and reenact section
one, article six of said chapter, all relating to speed limitations;
providing a jail penalty for third or subsequent convictions of
violating the speed limit by fifteen miles per hour or more; and
providing a jail penalty for conviction of violating the speed limit
in a school zone or the speed limit in a construction zone by
fifteen miles per hour or more.

Be it enacted by the Legislature of West Virginia:

That section four-b, article three, chapter seventeen-c of the code
of West Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted; and that section one, article six of said
chapter be amended and reenacted, all to read as follows:
Article
  3. Traffic Signs, Signals and Markings.
  6. Speed Restrictions.

ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS.

*§17C-3-4b. Traffic violations in construction zones; posting requirement; criminal penalty.

  (a) At each and every location where street or highway construction work is to be conducted a sign shall be posted at least one thousand feet from the construction site, or as close to one thousand feet from the construction site as is practicable given the location of the site when workers are present, notifying all motorists as to the speed limit and displaying the words “construction work”.

  (b) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section by less than fifteen miles per hour is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred dollars.

  (c) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section by fifteen miles per hour or more is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred dollars or confined in a county or regional jail not more than twenty days, or both.

  (d) Nothing in this section shall be construed to preclude prosecution of any operator of a motor vehicle who commits a violation of any other provision of this code for such violation.

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalty.

  (a) No person may drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or

* Clerk’s Note: This section was also amended by HB 2295 (Chapter 180), which passed prior to this act.
entering the highways in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed for compliance with subsection (a) of this section, the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized is lawful, but any speed in excess of the limits specified in this subsection or established as hereinafter authorized is unlawful.

(1) Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school property including school grounds and any street or highway abutting such school grounds and extending one hundred twenty-five feet along such street or highway from the school grounds. The speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the division of highways;

(2) Twenty-five miles per hour in any business or residence district;

(3) Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter.

The speeds set forth in this section may be altered as authorized in sections two and three of this article.

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled-access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour.
and the speed limits specified in subsection (b) of this section do not apply.

(e) Unless otherwise provided in this section, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than five hundred dollars: Provided, That if such third or subsequent conviction is based upon a violation of the provisions of this section where the offender exceeded the speed limit by fifteen miles per hour or more, then upon conviction, shall be fined not more than five hundred dollars or confined in the county or regional jail for not more than six months, or both.

(f) Any person who violates the provisions of subdivision (1), subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars: Provided, That if such conviction is based upon a violation of the provisions of subdivision (1), subsection (b) of this section where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars or confined in the regional or county jail for not more than six months, or both.

(g) If an owner or driver is arrested under the provisions of this section for the offense of driving above the posted speed limit on a controlled-access highway or interstate highway, and if the evidence shall show that the motor vehicle was being operated at less than ten miles per hour above said speed limit, then, upon conviction thereof, such person shall be fined not more than five dollars, plus court costs.

If an owner or driver is convicted under the provisions of this section for the offense of driving above the speed limit on a controlled-access highway or interstate highway of this state, and if the evidence shall show that the motor vehicle was being
operated at less than ten miles per hour above said speed limit, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on such conviction shall not be transmitted to the division of motor vehicles.

(h) If an owner or driver is convicted in another state for the offense of driving above the maximum speed limit on a controlled-access highway or interstate highway, and if the maximum speed limit in such other state is less than the maximum speed limit for a comparable controlled-access highway or interstate highway in this state, and if the evidence shall show that the motor vehicle was being operated at less than ten miles per hour above what would be the maximum speed limit for a comparable controlled-access highway or interstate highway in this state, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on such conviction shall not be transmitted to the division of motor vehicles, or, if transmitted, shall not be recorded by the division, unless within a reasonable time after conviction, the person convicted has failed to pay all fines and costs imposed by the other state: Provided, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.

CHAPTER 286

(Com. Sub. for S. B. 428 — By Senators Love, Wooton and Fanning)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]
records of the treasurer regarding certain checks which have not been presented for payment from the freedom of information act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

*§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

* Clerk's Note: This section was also amended by SB 137 (Chapter 223), which passed subsequent to this act.
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.” Any information or records maintained by the
treasurer concerning any check which has not been presented
for payment within six months of the date of issuance may only
be disclosed to the state agency specified on the check, or to the
payee, his or her personal representative, next of kin or
attorney-at-law and is otherwise confidential and exempt from
disclosure under the provisions of article one, chapter twenty-
nine-b of this code. 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 proce-
dure for such payments from the treasury.

CHAPTER 287

(S. B. 534 — By Senators Wooton, Ball, Dittmar, Fanning, Hunter, Kessler,
McCabe, Minard, Mitchell, Oliverio, Redd, Ross, Deem and McKenzie)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five-a, chapter
twenty-six of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to report of tuberculosis
cases; reducing reporting time from forty-eight hours to twenty-
four hours; and clarifying reporting requirements.

Be it enacted by the Legislature of West Virginia:
That section four, 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.


(a) Every physician practicing in this state, every public health officer in the state, and every chief medical officer having charge of any hospital or clinic or other similar public or private institution in the state shall report in writing to the local department of health in the patient’s county of residence the name, age, sex, race, home address and type of disease of every person having tuberculosis who comes under his or her observation or care. Such report shall be made within twenty-four hours after diagnosis.

(b) Every local department of health shall forward all reports of tuberculosis cases filed pursuant to this section to the state department of health and human resources tuberculosis program within twenty-four hours of receipt of such reports.

CHAPTER 288

(Com. Sub. for H. B. 2278 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article nine, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appropriating federal funds made available to the state for unemployment insurance and job service activities.

Be it enacted by the Legislature of West Virginia:

That section nine, article nine, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 9. UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND.


1. (a) Pursuant to 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, funds may become available to the state. The provisions of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, impose certain requirements that affect the state's use of the funds. It is the purpose of this section to ensure that the state meets each requirement imposed by the provisions of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, to enable the state to expend the funds for the purposes intended by federal law.

2. (b) The bureau of employment programs is designated as the state agency authorized to receive funds made available pursuant to 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended.

3. (c) Expenditure of any funds made available to the state pursuant to 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, shall be for the specific purposes and in the amounts authorized under 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and are to be made only in accordance with appropriation by the Legislature.

4. (d) The specific purpose and amount of an appropriation of funds received under 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, is, by operation of this section, the specific purpose and amount stated in the act of the Legislature appropriating the funds. Where the specific purpose or amount stated in the act of this Legislature appropriating the funds is not consistent with the provisions of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, the provisions of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, shall control and the specific purpose or amount authorized by those provisions are hereby incorporated into the appropriations act and, by the operation of this section, shall be the specific purpose or amount of the appropriation as if fully set forth in the appropriations act.
(e) Any restriction, limitation or obligation imposed by 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, upon the use of funds made available to the state or upon the purposes for which they may be expended is hereby incorporated and made a part of this subsection as if fully set forth herein, and is hereby incorporated into the act of the Legislature appropriating the funds and, by the operation of this section, the appropriations act shall impose each and every restriction, limitation or obligation imposed by 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, upon the use of the funds as if fully set forth in the appropriations act.

(f) Notwithstanding any other provision of this section to the contrary, moneys credited to the state under Section 903 of the Social Security Act, as codified in 42 U.S.C. §1103, with respect to federal fiscal years 1999, 2000 and 2001 are authorized to be used only for the administration of the state's unemployment compensation program.

(g) The effective date of the use of any funds made available to the state under the provisions of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the effective date of any restriction, limitation or obligation imposed by those provisions on the use of those funds, shall be the effective date of the appropriations act of the Legislature appropriating the funds, and the use of the funds shall not extend beyond the conclusion of any time limitation imposed by 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, for the expenditure of the funds.

(h) Notwithstanding any provision of article eleven, chapter four of this code to the contrary, the governor may not authorize the expenditure of funds received under 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, pursuant to the provisions of section five, article eleven, chapter four of this code unless otherwise permitted under federal law.
AN ACT to amend and reenact section twenty-four, article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating a felony offense for certain violations of the water pollution control act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-24. Violations; Criminal Penalties.

(a) Any person who causes pollution or who fails or refuses to discharge any duty imposed upon him or her by this article or by any rule of the board or director, promulgated pursuant to the provisions and intent of this article or article three, chapter twenty-two-b of this code, or by an order of the director or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, or who fails or refuses to comply with any term or condition of such permit, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both fine and imprisonment.

(b) Any person who intentionally misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provi-
sions of this article or any rules promulgated by the director
thereunder is guilty of a misdemeanor and, upon conviction
thereof, shall be punished by a fine of not less than one thou-
sand dollars nor more than ten thousand dollars or by imprison-
ment in the county jail not exceeding six months or by both fine
and imprisonment.

(c) Any person who willfully or negligently violates any
provision of any permit issued under or subject to the provi-
sions of this article or who willfully or negligently violates any
provision of this article or any rule of the board or director or
any effluent limitation or any order of the director or board is
guilty of a misdemeanor and, upon conviction thereof, shall be
punished by a fine of not less than two thousand five hundred
dollars nor more than twenty-five thousand dollars per day of
violation or by imprisonment in the county jail not exceeding
one year or by both fine and imprisonment.

(d) Any person convicted of a second or subsequent willful
violation of subsections (b) or (c) of this section or knowingly
and willfully violates any provision of any permit, rule or order
issued under or subject to the provisions of this article, or
knowingly and willfully violates any provision of this article,
is guilty of a felony, and upon conviction shall be imprisoned
in a correctional facility not less than one nor more than three
years, or fined not more than fifty thousand dollars for each day
of violation, or both fined and imprisoned.

(e) Any person may be prosecuted and convicted under the
provisions of this section notwithstanding that none of the
administrative remedies provided for in this article have been
pursued or invoked against said person and notwithstanding that
civil action for the imposition and collection of a civil penalty
or an application for an injunction under the provisions of this
article has not been filed against such person.

(f) Where a person holding a permit is carrying out a
program of pollution abatement or remedial action in compli-
ance with the conditions and terms of the permit, the person is
not subject to criminal prosecution for pollution recognized and
authorized by the permit.
CHAPTER 290
(S. B. 148 — By Senators Dittmar, Kessler, Ross and Snyder)

[Passed March 3, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five-a, article twelve, chapter eight of said code, all relating to restricting the power of counties and municipalities to control the purchase, possession, transfer, carrying, transport, sale and storage of certain weapons and ammunition; and providing certain exceptions thereto.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five-a, article twelve, chapter eight of said code be amended and reenacted, all to read as follows:

Chapter
7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.
§7-1-3. Jurisdiction, powers and duties.

1 The county commissions, through their clerks, shall have
2 the custody of all deeds and other papers presented for record
3 in their counties and the same shall be preserved therein, or
4 otherwise disposed of as now is, or may be prescribed by law.
5 They shall have jurisdiction in all matters of probate, the
6 appointment and qualification of personal representatives,
guardians, committees, curators and the settlement of their accounts and in all matters relating to apprentices. They shall also, under the rules as now are or may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of their counties, including the establishment and regulation of roads, ways, streets, avenues, drives and the like, and the naming or renaming thereof, in cooperation with local postal authorities, the division of highways and the directors of county emergency communications centers, to assure uniform, nonduplicative conversion of all rural routes to city-type addressing on a permanent basis, bridges, public landings, ferries and mills, with authority to lay and disburse the county levies. They shall, in all cases of contest, judge of the election, qualification and returns of their own members, and of all county and district officers, subject to appeal as prescribed by law. The tribunals as have been heretofore established by the Legislature under and by virtue of section thirty-four, article VIII of the constitution of one thousand eight hundred seventy-two, for police and fiscal purposes, shall, until otherwise provided by law, remain and continue as at present constituted in the counties in which they have been respectively established, and shall be and act as to police and fiscal matters in lieu of the county commission herein mentioned, until otherwise provided by law. And until otherwise provided by law, the clerk as is mentioned in section twenty-six of said article, as amended, shall exercise any powers and discharge any duties heretofore conferred on, or required of, any court or tribunal established for judicial purposes under said section, or the clerk of the court or tribunal, respectively, respecting the recording and preservation of deeds and other papers presented for record, matters of probate, the appointment and qualification of personal representatives, guardians, committees, curators and the settlement of their accounts and in all matters relating to apprentices. The county commission may not limit the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle or shotgun or any ammunition or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so as to, directly or indirectly, prohibit the ownership of the
46 ammunition: Provided, That no provision in this section may be
47 construed to limit the authority of a county to restrict the
48 commercial use of real estate in designated areas through
49 planning or zoning ordinances.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED
RELATIONS OF MUNICIPALITIES, GOVERNING
BODIES AND MUNICIPAL OFFICERS AND EMPLOY­
EES; SUITS AGAINST MUNICIPALITIES.

§8-12-5a. Limitations upon municipalities’ power to restrict the
purchase, possession, transfer, ownership, carrying,
transport, sale and storage of certain weapons and
ammunition.

1 The provisions of section five of this article notwithstand-
2 ing, neither a municipality nor the governing body of any
municipality may limit the right of any person to purchase;
possess, transfer, own, carry, transport, sell or store any
revolver, pistol, rifle or shotgun or any ammunition or ammuni-
tion components to be used therewith nor to so regulate the
keeping of gunpowder so as to directly or indirectly prohibit the
ownership of the ammunition. Nothing herein shall in any way
impair the authority of any municipality, or the governing body
thereof, to enact any ordinance or resolution respecting the
power to arrest, convict and punish any individual under the
provisions of subdivision (16), section five of this article or
from enforcing any such ordinance or resolution: Provided,
That any municipal ordinance in place as of the effective date
of this section shall be excepted from the provisions of this
section: Provided, however, That no provision in this section
may be construed to limit the authority of a municipality to
restrict the commercial use of real estate in designated areas
through planning or zoning ordinances.
CHAPTER 291

(Com. Sub. for S. B. 638 — By Senators Wooton, Snyder and Love)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter thirty-two-b, relating to the adoption of the model state commodity code; establishing state jurisdiction over commodity issues that are not preempted by federal law; providing for enforcement and prosecutorial power; and granting jurisdiction to courts of competent jurisdiction in the state to hear certain commodity matters; penalties.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 32B. THE WEST VIRGINIA COMMODITIES ACT.

Article
2. Administration and Enforcement.
4. Severability and Saving Provision.

ARTICLE 1. GENERAL PROVISIONS.

§32B-1-1. Definitions.
§32B-1-2. Unlawful commodity transactions.
§32B-1-3. Exempt person transactions.
§32B-1-4. Exempt transactions.
§32B-1-5. Unlawful commodity activities.
§32B-1-6. Fraudulent conduct.
§32B-1-7. Liability of principals, controlling persons and others.
§32B-1-9. Purpose.
§32B-1-1. Definitions.

(a) "Commissioner" means the auditor of the state of West Virginia.

(b) "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange or other form of marketplace.

(c) "CFTC Rule" means any rule, regulation or order of the commodity futures trading commission in effect on the effective date of this chapter, and all subsequent amendments, additions or other revisions thereto unless the commissioner, within ten days following the effective date of any such amendment, addition or revision, disallows the application thereof to this part or to any provision thereof by rule, regulation or order.

(d) "Commodity" means, except as otherwise specified by the commissioner by rule, regulation or order, any agricultural, grain or livestock product or byproduct, any metal or mineral, including a precious metal defined in subsection (m) of this section, any gem or gemstone, whether characterized as precious, semi-precious or otherwise, any fuel, whether liquid, gaseous or otherwise, any foreign currency, and all other goods, articles, products or items of any kind. The term commodity does not include:

(1) A numismatic coin whose fair market value is at least fifteen percent higher than the value of the metal it contains; (2) Real property or any timber, agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property; 

(2) Real property or any timber, agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property; or

(3) Any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner thereof.
(e) "Commodity contract" means any account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract or otherwise. Any commodity contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes. A commodity contract does not include any contract or agreement which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(f) "Commodity Exchange Act" means the act of Congress known as the Commodity Exchange Act, 7 U.S.C. 1 (1974), as amended, and all subsequent amendments, additions or other revisions thereto, unless the commissioner, within ten days following the effective date of any such amendment, addition or revision, disallows the application thereof to this part or to any provision thereof by rule, regulation or order.

(g) "Commodity futures trading commission" means the independent regulatory agency established by Congress to administer the Commodity Exchange Act.

(h) "Commodity merchant" means any of the following as defined or described in the Commodity Exchange Act or by CFTC Rule:

(1) Futures commission merchant;
(2) Commodity pool operator;
(3) Commodity trading advisor;
(4) Introducing broker;
(5) Leverage transaction merchant;
(6) An associated person of any of the foregoing;
(7) Floor broker; and

(8) Any other person, other than a futures association, required to register with the commodity futures trading commission.

(i) "Commodity option" means any account, agreement or contract giving a party thereto the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, or both commodities and commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but does not include an option traded on a national securities exchange registered with the United States securities and exchange commission.

(j) "Financial institution" means a bank, savings institution or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

(k) "Offer" includes every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

(l) "Person" means an individual, a corporation, a partnership, association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government. "Person" does not include a contract market designated by the commodity futures trading commission, any clearinghouse of that commission, a national securities exchange registered with the securities and exchange commission, or any employee, officer or director of such contract market, clearinghouse or exchange acting solely in that capacity.

(m) "Precious metal" means the following in coin, bullion or other form: Silver, gold, platinum, palladium, copper, and any other metals as specified by the commissioner by rule, regulation or order.

(n) "Sale" or "sell" includes every sale, contract of sale, contract to sell or disposition for value.
§32B-1-2. Unlawful commodity transactions.

Except as otherwise provided in section three or four of this article, a person shall not sell or purchase or offer to sell or purchase any commodity under any commodity contract or commodity option, nor shall a person offer to enter into or enter into a contract as a seller or purchaser any commodity contract or any commodity option.

§32B-1-3. Exempt person transactions.

(a) The prohibitions in section two of this article do not apply to any transaction offered by and in which one of the following persons, or any employee, officer or director thereof acting solely in that capacity, is the purchaser or seller:

(1) A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration;

(2) A person registered with the securities and exchange commission as a broker-dealer whose activities require such registration;

(3) A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subdivision (1) or (2) of this section;

(4) A person who is a member of a contract market designated by the commodity futures trading commission, or any clearinghouse thereof;

(5) A financial institution; or

(6) A person registered under the laws of this state as a securities broker-dealer whose activities require such registration.

(b) The exemption provided by this section does not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC Rule.

§32B-1-4. Exempt transactions.
(a) The prohibitions in section two of this article do not apply to the following:

(1) An account, agreement or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(2) A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by the payment: 

Provided, That for purposes of this subdivision, physical delivery occurs if, within the twenty-eight day period, the quantity of precious metals purchased by the payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, that is:

(A) A financial institution;

(B) A depository in which the warehouse receipts are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission;

(C) A storage facility licensed or regulated by the United States or any agency thereof; or

(D) A depository designated by the commissioner in which the depository, or other person which itself qualifies as a depository, or a qualified seller issues and the purchaser receives, a certificate, document of title, confirmation or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

(3) A commodity contract solely between persons engaged in producing, processing, using commercially or handling as
merchants, each commodity subject to the contract, or any by-
product of the commodity; or

(4) A commodity contract under which the offeree or the 
purchaser is a person referred to in section three of this article, 
an insurance company, an investment company as defined in 
the Investment Company Act of 1940, or an employee pension 
and profit sharing or benefit plan other than a self-employed 
individual retirement plan or individual retirement account.

(b) For the purposes of subdivision (2), subsection (a) of 
this section, a qualified seller is a person who:

(1) Is a seller of precious metals and has a tangible net 
worth of at least five million dollars, or has an affiliate who has 
unconditionally guaranteed the obligations and liabilities of the 
seller and the affiliate has a tangible net worth of at least five 
million dollars;

(2) Has stored precious metals with one or more depositories on behalf of customers for at least the previous three years;

(3) Prior to any offer, and annually thereafter, files with the 
commissioner a sworn notice of intent to act as a qualified 
seller under subdivision (2), subsection (a) of this section, 
containing:

(A) The seller's name and address, and the names of the 
seller's directors, officers, controlling shareholders, partners, 
principals and other controlling persons;

(B) The address of the seller's principal place of business 
and date of incorporation or organization, and the name and 
address of seller's registered agent in this state;

(C) A statement that the seller, or a person affiliated with 
the seller who has guaranteed the obligations and liabilities of 
the seller, has a tangible net worth of at least five million 
dollars;

(D) Depository information including:

(i) The name and address of each depository that the seller 
intends to use;
(ii) The name and address of each depository where the seller has stored precious metals on behalf of customers for the previous three years; and

(iii) Independent verification from each depository named by the seller stating that the depository has stored precious metals on behalf of the seller's customers for the previous three years and the total deposits made by the seller during this period;

(E) Financial statements from the seller, or the person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, for the past three years, audited by an independent certified public accountant, including the accountant's report;

(F) A statement describing the details of all civil, criminal or administrative proceedings currently pending or adversely resolved against the seller or its directors, officers, controlling shareholders, partners, principals or other controlling persons during the past ten years including:

(i) Civil litigation and administrative proceedings involving securities or commodities violations or fraud;

(ii) Criminal proceedings;

(iii) Denials, suspensions or revocations of securities or commodities, licenses or registrations;

(iv) Suspensions or expulsions from membership in, or associations with, self-regulatory organizations registered under the Securities Exchange Act of 1934, or the Commodities Exchange Act; or

(v) A statement that there were no such proceedings;

(4) Notifies the commissioner within fifteen days of any material changes in the information provided in the notice of intent; and

(5) Annually furnishes to each purchaser for whom the seller is then storing precious metals, and furnishes to the commissioner a report by an independent certified public
accountant of the accountant's examination of the seller's precious metals storage program.

(c) The commissioner may, upon request by the seller, waive any of the exemption requirements in subsection (b) of this section, conditionally or unconditionally.

(d) The commissioner may, by order, deny, suspend, revoke or place limitations on the authority to engage in business as a qualified seller under the provisions of subdivision (2), subsection (a) of this section, if the commissioner finds that the order is in the public interest and that the person, the person's officers, directors, partners, agents, servants or employees, any person occupying a similar status or performing similar functions, any person who directly or indirectly controls or is controlled by the seller or the seller's affiliates or subsidiaries:

(1) Has filed a notice of exemption under the provisions of subsection (c) of this section with the commissioner or the designee of the commissioner which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Has, within the last ten years, pled guilty or nolo contendere to, or has been convicted of any crime indicating a lack of fitness to engage in the investment commodity business;

(3) Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice which injunction indicates a lack of fitness to engage in the investment commodities business;

(4) Is the subject of an order of the commissioner denying, suspending or revoking the person's license as a securities broker-dealer, sales representative or investment advisor;

(5) Is the subject of any of the following orders which are currently effective and which were issued within the last five years:

(A) An order by the securities agency or commissioner of another state, Canadian province or territory, the securities and
exchange commission, or the commodity futures trading commission, entered after notice and opportunity for hearing, denying, suspending or revoking the person's registration as a futures commission merchant, commodity trading adviser, commodity pool operator, securities broker-dealer, sales representative or investment adviser or the substantial equivalent of those terms;

(B) Suspension or expulsion from membership in, or association with, a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act;

(C) A United States postal service fraud order;

(D) A cease and desist order entered after notice and opportunity of hearing by the commissioner or the securities agency or commissioner of another state, Canadian province or territory, the securities and exchange commission, or the commodity futures trading commission;

(E) An order entered by the commodity futures trading commission denying, suspending or revoking registration under the Commodity Exchange Act;

(6) Has engaged in an unethical or dishonest act or practice in the investment commodities or securities business; or

(7) Has failed reasonably to supervise sales representatives or employees.

(e) If the public interest or the protection of investors so requires, the commissioner may, by order, summarily deny or suspend the exemption for a qualified seller. Upon the entry of the order, the commissioner shall promptly notify the person claiming this status that an order has been entered, the reasons for the order and that within thirty days after the receipt of a written request the matter will be set for hearing. The provisions of section ten, article two of this chapter apply with respect to all subsequent proceedings.

(f) If the commissioner finds that any applicant or qualified seller is no longer in existence, has ceased to do business, is
subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian or cannot be located after reasonable search, then the commissioner may, by order, deny or revoke the exemption for a qualified seller.

(g) The commissioner may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by the provisions of this chapter that are not within the exclusive jurisdiction of the commodity futures trading commission as granted by the Commodity Exchange Act, exempting, conditionally or unconditionally, and implementing the provisions of this chapter for the protection of purchasers and sellers of commodities.

§32B-1-5. Unlawful commodity activities.

(a) A person may not engage in a trade or business or otherwise act as a commodity merchant unless the person: (1) Is registered or temporarily licensed with the commodity futures trading commission for each activity in which the person is acting as a commodity merchant and the registration or temporary license has not expired, been suspended or revoked; or (2) is exempt from registration by virtue of the Commodity Exchange Act or of a CFTC Rule.

(b) A board of trade shall not trade or provide a place for the trading of any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless the board of trade has been so designated for the commodity contract or commodity option and the designation has not been vacated, suspended or revoked.

§32B-1-6. Fraudulent conduct.

(a) A person may not directly or indirectly:

(1) Cheat or defraud, or attempt to cheat or defraud any other person or employ any device, scheme or artifice to defraud any other person;

(2) Make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a
material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(3) Engage in any transaction, act, practice or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person; or

(4) Misappropriate or convert the funds, security or property of any other person in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, any commodity contract or commodity option subject to the provisions of subdivision (2), (3) or (4), subsection (a), section four of this article.

§32B-1-7. Liability of principals, controlling persons and others.

(a) The act, omission or failure of any official, agent or other person acting for any individual, association, partnership, corporation or trust within the scope of his or her employment or office is considered the act, omission or failure of the individual, association, partnership, corporation or trust, as well as of such official, agent or other person.

(b) Every person who directly or indirectly controls a person liable under any provision of this chapter, every partner, officer or director of a person, every person occupying a similar status or performing similar functions and every employee of a person who materially aids in the violation is also liable jointly and severally with and to the same extent as the other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the alleged facts that the liability is based upon.


Nothing in this chapter impairs, derogates or otherwise affects the authority or powers of the commissioner under the West Virginia Uniform Securities Act, or the application of any provision of chapter thirty-two of this code to any person or
§32B-1-9. Purpose.

This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' laws and the administration and enforcement thereof. This chapter is not intended to create any rights or remedies upon which actions may be brought by private persons against persons who violate the provisions of this chapter.

ARTICLE 2. ADMINISTRATION AND ENFORCEMENT.

§32B-2-1. Investigations.

(a) The commissioner may make investigations, within or without this state, as it finds necessary or appropriate to:

(1) Determine whether any person has violated, or is about to violate, any provision of this chapter or any rule or order of the commissioner; or

(2) Aid in enforcement of this chapter.

(b) The commissioner may publish information concerning any violation of this chapter or any rule or order of the commissioner.

(c) For purposes of any investigation or proceeding under this chapter, the commissioner or any officer or employee...
designated by rule or order may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner finds to be relevant or material to the inquiry.

(d)(1) If a person does not give testimony or produce the documents required by the commissioner or a designated employee pursuant to an administrative subpoena, the commissioner or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

(2) The request for order of compliance may be addressed to either:

(A) The circuit court of Kanawha County or the circuit court for the respective judicial circuit where service may be obtained on the person refusing to testify or produce, if the person is within this state; or

(B) The appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

§32B-2-2. Enforcement of chapter.

(a) If the commissioner believes, whether or not based upon an investigation conducted under the provisions of section one of this article, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under the provisions of this chapter, then the commissioner may:

(1) Issue a cease and desist order;

(2) Issue an order imposing a civil penalty in amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;

(3) Initiate any of the actions specified in subsection (b) of this section; or
(4) Take disciplinary action against a licensed person as specified in section eight, article three of this chapter.

(b) The commissioner may institute any of the following actions in an appropriate court of this state or of another state, in addition to any legal or equitable remedies otherwise available:

(1) A declaratory judgment;

(2) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the commissioner;

(3) An action for disgorgement;

(4) An action for appointment of a receiver or conservator for the defendant or the defendant's assets; or

(5) An action to enjoin permanently any person from acting as a commodity broker-dealer or a commodity sales representative, as defined in subsection (a) or (b), section one, article three of this chapter.

§32B-2-3. Power of court to grant relief.

(a)(1) Upon a proper showing by the commissioner that a person has violated, or is about to violate, any provision of this chapter or any rule or order of the commissioner, the circuit court may grant appropriate legal or equitable remedies.

(2) Upon showing of violation of this chapter or a rule or order of the commissioner, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

(A) Imposition of a civil penalty in amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;

(B) Disgorgement;
(C) Declaratory judgment;

(D) Restitution to investors wishing restitution;

(E) Appointment of a receiver or conservator for the
defendant or the defendant's assets; and

(F) An injunction permanently enjoining the defendant or
defendants from acting as a commodity broker-dealer or a
commodity sales representative, as defined in section one-a or
one-b, article three of this chapter.

(3) Upon a showing that the defendant is about to violate
this chapter or a rule or order of the commissioner, the remedies
shall be limited to:

(A) A temporary restraining order;

(B) A temporary or permanent injunction;

(C) A writ of prohibition or mandamus; or

(D) An order appointing a receiver or conservator for the
defendant or the defendant's assets.

(b) The court may not require the commissioner to post a
bond in any official action under this chapter.

(c)(1) Upon a proper showing by the commissioner of
securities or commodity agency of another state that a person,
other than a government or governmental agency or instrumen-
tality, has violated, or is about to violate, any provision of the
commodity code of that state or any rule or order of the
commissioner or securities or commodity agency of that state,
the circuit court may grant appropriate legal and equitable
remedies.

(2) Upon showing of a violation of the securities or
commodity act of the foreign state or a rule or order of the
commissioner of securities or commodity agency of the foreign
state, the court, in addition to traditional legal or equitable
remedies, including temporary restraining orders, permanent or
temporary prohibitory or mandatory injunctions and writs of
prohibition or mandamus, may grant the following special
remedies:
(A) Disgorgement; and

(B) Appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant’s assets located in this state.

(3) Upon a showing that the defendant is about to violate the securities or commodity act of the foreign state or a rule or order of the commissioner of securities or commodity agency of the foreign state, the remedies shall be limited to:

(A) A temporary restraining order;

(B) A temporary or permanent injunction;

(C) A writ of prohibition or mandamus; or

(D) An order appointing a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant’s assets located in this state.

§32B-2-4. Criminal penalties.

1 (a) Any person who willfully violates:

2 (1) Any provision of this chapter; or

3 (2) Any rule or order of the commissioner under this chapter shall, upon conviction of each violation, be fined not more than twenty thousand dollars or imprisoned at a state correctional facility not more than ten years, or both.

4 (b) Any person convicted of violating a rule or order under this chapter may be fined but not imprisoned if the person proves that he or she had no knowledge of the rule or order.

5 (c) The commissioner may refer any evidence concerning violations of this chapter or any rule or order of the commissioner to the United States attorney or the appropriate county prosecuting attorneys, who may, with or without a reference from the commissioner, institute the appropriate criminal proceedings under this chapter.

§32B-2-5. Administration of chapter.

1 (a) This chapter shall be administered by the commissioner
(b) Neither the commissioner nor any employees of the commissioner may use any information that is filed with or obtained by the commissioner that is not public information for personal gain or benefit, nor may the commissioner nor any employees of the commissioner conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate the information.

(c)(1) Except as provided for in subdivision (2) of this subsection, all information collected, assembled or maintained by the commissioner is public information and is available for the examination of the public as provided by the Freedom of Information Act in chapter twenty-nine-b of this code.

(2) The following exceptions to subdivision (1) of this subsection are confidential:

(A) Information obtained in private investigations pursuant to section one of this article;

(B) Information made confidential by the provisions of the Freedom of Information Act in chapter twenty-nine-b of this code; and

(C) Information obtained from federal agencies that cannot be disclosed under federal law.

(3) The commissioner may disclose any information made confidential under paragraph (A), subdivision (2), subsection (c) of this section to persons identified in subsection (a), section six of this article.

(4) No provision of this chapter creates or negates any privilege that exists at common law, by statute or otherwise, when any documentary or other evidence is sought under subpoena directed to the commissioner or any employee of the commissioner.

§32B-2-6. Cooperation with other agencies.
(a) To encourage uniform application and interpretation of this chapter and of securities regulation and enforcement in general, the commissioner and the employees of the commissioner may cooperate, and bear the expense of such cooperation, with the securities agencies or commissioner of another jurisdiction, Canadian province or territory, any other agencies administering this chapter, the commodity futures trading commission, the securities and exchange commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies and any governmental law-enforcement agencies.

(b) The cooperation authorized by subsection (a) of this section includes, but is not limited to, the following:

(1) Making joint examinations or investigations;
(2) Holding joint administrative hearings;
(3) Filing and prosecuting joint litigation;
(4) Sharing and exchanging personnel;
(5) Sharing and exchanging information and documents;
(6) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and releases; and
(7) Issuing and enforcing subpoenas at the request of the agency administering this chapter in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

§32B-2-7. General authority to adopt rules, forms and orders.

(a) In addition to specific authority granted elsewhere in this chapter, the commissioner may make, amend and rescind rules, forms and orders as are necessary to effectuate the provisions of this chapter. The rules or forms include, but are
not limited to, the following:

(1) Rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter.

(2) For the purpose of rules or forms, the commissioner may classify commodities and commodity contracts, persons and matters within the commissioner's jurisdiction.

(b) Unless specifically provided for in this chapter, no rule, form or order may be adopted, amended or rescinded unless the commissioner finds that the action is:

(1) Necessary or appropriate in the public interest or for the protection of investors; and

(2) Consistent with the purposes fairly intended by the policy and provisions of this chapter.

(c) All rules and forms of the commissioner shall be published.

(d) A provision of this chapter imposing any liability does not apply to any act done or omitted in good faith in conformity with a rule, order or form adopted by the commissioner, notwithstanding that the rule, order or form may later be amended, rescinded or be determined by judicial or other authority to be invalid for any reason.

§32B-2-8. Consent to service of process.

When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the commissioner, such conduct shall cause the appointment of the commissioner as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor or personal representative for an action brought under this chapter or any rule or order of the commissioner with the same force and validity as if served personally.

§32B-2-9. Scope of the chapter.

(a) Sections two, five and six, article one of this chapter
shall apply to persons who sell or offer to sell when:

(1) An offer to sell is made in this state; or

(2) An offer to buy is made and accepted in this state.

(b) Sections two, five and six, article one of this chapter apply to persons who buy or offer to buy when:

(1) An offer to buy is made in this state; or

(2) An offer to sell is made and accepted in this state.

(c) For the purposes of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:

(1) Originates from this state; or

(2) Is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.

(d) For the purposes of this section, an offer to buy or to sell is accepted in this state when acceptance:

(1) Is communicated to the offeror in this state; and

(2) Has not previously been communicated to the offeror, orally or in writing, outside this state and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state, and the offer is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.

(e) An offer to sell or to buy is not made in this state when:

(1) The publisher circulates or there is circulated on his or her behalf any bona fide newspaper or other publication of general, regular or paid circulation that is not published in this state, or that is published in this state but has had more than two thirds of its circulation outside this state during the past twelve months; or
(2) A radio or television program originating outside this state that is received in this state.


(a) The commissioner may commence an administrative proceeding under this chapter by entering a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but it shall be in writing.

(b) Upon entry of a notice of intent or summary order, the commissioner shall promptly notify all interested parties that the notice or summary order has been entered and the reasons therefor. If the proceeding is pursuant to a notice of intent, then the commissioner shall inform all interested parties of the date, time and place set for the hearing in the notice. If the proceeding is pursuant to a summary order, then the commissioner shall inform all interested parties that they have thirty business days from the entry of the order to file a written request for a hearing on the matter with the commissioner and that the hearing will be scheduled to commence within thirty business days after the receipt of the written request.

(c) If the proceeding is pursuant to a summary order, then the commissioner, whether or not a written request for a hearing is received from any interested party, may set a hearing on the matter on the commissioner's own motion.

(d) If no hearing is requested and none is ordered by the commissioner, then the summary order will automatically become a final order after thirty business days.

(e) If a hearing is requested or ordered, then the commissioner, after notice of and an opportunity for a hearing is made to all interested persons, may modify or vacate the order or extend it until final determination.

(f) No final order or order after a hearing may be returned without:

(1) Appropriate notice to all interested persons;
(2) Opportunity for hearing by all interested persons; and

(3) Entry of written findings of fact and conclusions of law.

(g) Every hearing in an administrative proceeding under this chapter is public unless the commissioner grants a request joined in by all the respondents that the hearing be conducted privately.


(a) Any person aggrieved by a final order of the commissioner may obtain a review of the order in the circuit court of Kanawha County by filing, within sixty days after the entry of the order, a written petition requesting that the order be modified or set aside, in whole or in part. A copy of the petition for review shall be served upon the commissioner.

(b) Upon the filing of a petition for review, except where the taking of additional evidence is ordered by the court pursuant to the provisions of subsection (e) or (f) of this section, the court has exclusive jurisdiction of the matter and the commissioner may not modify or set aside the order, in whole or in part.

(c) The filing of a petition for review under the provisions of subsection (a) of this section, does not, unless specifically ordered by the court, operate as a stay on the commissioner’s order, and the commissioner may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

(d) Upon receipt of the petition for review, the commissioner shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which it was based. If the order became final by operation of law under the provisions of subsection (d), section ten of this article, then the commissioner shall certify and file in court the summary order and evidence of its service upon the parties and an affidavit certifying that no hearing has been held and that the order became final pursuant to the provisions of subsection (d), section ten of this article.
(e) If either the aggrieved party or the commissioner applies to the court for leave to present additional evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner or other good cause, then the court may order the additional evidence to be taken by the commissioner under such conditions as the court considers proper.

(f) If new evidence is ordered to be taken by the court, then the commissioner may modify the findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.

(g) The court shall review the petition based upon the original record before the commissioner as amended under the provisions of subsections (e) and (f) of this section. The findings of the commissioner as to the facts, if supported by competent, material and substantive evidence, are conclusive. Based upon this review, the court may affirm, modify, enforce or set aside the order, in whole or in part.

(h) The judgment of the circuit court is subject to review by the supreme court of appeals of this state.

§32B-2-12. Pleading exemptions.

It is not necessary to negate any of the exemptions of this chapter in any complaint, information or indictment, or in any writ or proceeding brought under this chapter, and the burden of proof of any such exemption is upon the party claiming the exemption.


(a) It is a defense in any complaint, information, indictment, writ or proceeding brought under this chapter alleging a violation of the provisions of section two, article one of this chapter, based solely on the failure in an individual case to make physical delivery within the applicable time period under the provisions of subsection (e), section one or subdivision (2), subsection (a), section four, article one of this chapter if:
(b) Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller’s officers, directors, partners, agents, servants or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller, or the seller’s affiliates, subsidiaries or successors; and

(c) Physical delivery was completed within a reasonable time under the applicable circumstances.

ARTICLE 3. NOTICE FILING.

§32B-3-1. Definitions.

(a) “Commodity broker-dealer” means any person engaged in the business of effecting transactions in commodity contracts or commodity options, as defined in article one of this chapter, for the account of others or for the person’s own account.

(b) “Commodity sales representative” means any person authorized to act and that is acting for a commodity broker-dealer in effecting or attempting to effect a transaction in a commodity contract or a commodity option.

(c) All commodity broker-dealers and commodity sales representatives shall provide notice to the commissioner of securities on a form prescribed by the commissioner of securities that they are doing business in sales, offers or other nonexempt transactions involving sales of commodities. All notices shall contain such information as the commissioner of securities determines necessary or appropriate to facilitate the administration of this chapter.

(d) The notice does not constitute the granting of a license, registration or other authorization to do business under this chapter but is to be maintained as a record of those engaged in commodities transactions in the state.

ARTICLE 4. SEVERABILITY AND SAVING PROVISIONS.

§32B-4-1. Severability of provisions.
§32B-4-2. Saving provisions.

§32B-4-1. Severability of provisions.
If any provision of this chapter or the application thereof to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application. To this end, the provisions of this chapter are severable.

§32B-4-2. Saving provisions.

(a) Prior law exclusively governs all suits, actions, prosecutions or proceedings that are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this chapter, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within the period of limitation that applied when the cause of action accrued, and in any event, within three years after the effective date of this chapter.

(b) All administrative orders applicable to this chapter remain in effect so long as they would have remained in effect if this chapter had not been enacted. They are considered to have been filed, entered or imposed under this chapter, but are governed by prior law.

(c) Prior law applies in respect of any offer or sale made prior to the effective date of this chapter pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law. Fraudulent transactions or transactions in violation of the federal commodities trading laws are expressly subject to the provisions of this chapter regardless of whether they were undertaken prior to the effective date of this chapter.

(d) Judicial review of all administrative orders in which review proceedings have not been instituted by the effective date of this chapter are governed by section eleven of this article, except that no review proceeding may be instituted unless the petition is filed within the period of limitation that applied to a review proceeding when the order was entered and, in any event, within sixty days after the effective date of this chapter.
AN ACT to amend and reenact sections twenty-three-a and twenty-three-e, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article five-c, chapter twenty-one of said code, all relating to providing for the issuance of one additional whitewater rafting license on the Gauley River; instituting a moratorium on additional whitewater licenses on certain sections of the New and Gauley rivers; freezing minimum license allocations for existing licenses on certain sections of the New and Gauley rivers; defining minimum license allocations; providing for the continued study of rafting carrying capacity of the state’s rivers by the whitewater commission; and clarifying that seasonal employees of commercial whitewater outfitters are exempt from overtime wage requirements.

Be it enacted by the Legislature of West Virginia:

That sections twenty-three-a and twenty-three-e, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to amend and reenact section one, article five-c, chapter twenty-one of said code, all to read as follows:

Chapter

20. Natural Resources.

20. Labor.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.
§20-2-23a. Whitewater commission; powers and duties of commission and division of natural resources; allocations; civil and criminal penalties for violations.

§20-2-23a. Whitewater commission; powers and duties of commission and division of natural resources; allocations; civil and criminal penalties for violations.

(a) There is hereby created a whitewater commission within the division of natural resources. The commission shall consist of the director of the division of natural resources or his or her designee; the director of the division of parks and tourism or his or her designee; three representatives of private river users who have no affiliation with any commercial river enterprise to be appointed by the governor: Provided, That no more than one representative of the private river users may be from each whitewater zone; and four persons representing four different licensed commercial whitewater outfitters currently operating within the state to be appointed by the governor. The superintendent of the New River Gorge National Park or his or her designee shall be a nonvoting member of the commission. All appointed members of the commission shall be citizens and residents of West Virginia. Of the four representatives of commercial outfitters, two persons shall represent commercial whitewater outfitters holding or controlling through corporate affiliation or common ownership multiple licenses in West Virginia and two persons shall represent commercial whitewater outfitters in West Virginia who hold only a single license and who have no common ownership or corporate affiliation with another licensee, the director of the division of natural resources shall serve as chairperson of the commission. Of the seven members of the commission first appointed by the governor, two shall be appointed for a term of one year, two for a term of two years and three for a term of three years. Thereafter, the terms of all appointed members of the commission are for three years. Members shall serve until their successors have been appointed and any vacancy in the office of a member shall be filled by appointment for the unexpired term. Members representing commercial outfitters who have served at least two
years on the commission are not eligible for reappointment to a successive term.

(b) The commission has the following powers and duties:

(1) To investigate and study commercial whitewater rafting, outfitting and activities related thereto which take place along the rivers or waters of the state;

(2) To designate any such rivers or waters or any portions thereof as "whitewater zones" for which commercial whitewater rafting, outfitting and activities are to be investigated and studied, and to determine the order and the periods of time within which the investigations and studies are to be conducted. The commission shall first investigate and study those whitewater zones which it finds to present serious problems requiring immediate regulation, including, without limitation, safety hazards and problems of overcrowding or environmental misuse;

(3) To restrict, deny or postpone the issuance of licenses to additional commercial whitewater outfitters seeking to operate in areas and portions of rivers and waters in this state designated whitewater zones by action of the director of the division of natural resources as authorized under prior enactment of this section and so designated by the filing of a written notice entered upon the records of the division containing the designation and reasonable description of the whitewater zone: Provided, That in consideration of the consolidation occurring among outfitting companies providing rafting services on the Gauley River, the commission shall grant one additional whitewater rafting license for the Gauley River on or before the first day of July, one thousand nine hundred ninety-nine, with preference being given in the selection process to the applicant best satisfying the following criteria: (i) The applicant demonstrates a record of providing commercial rafting and related whitewater services in a safe and lawful manner on the New River and other rivers; (ii) the applicant has continuously engaged for three or more years in the commercial rafting business on the New River and has, or can obtain, the necessary equipment and facilities to support Gauley River operations; (iii) the seniority of the application as measured by the length
of time the applicant has sought a Gauley River license with the
more senior application given preference; (iv) that the applicant
is not affiliated with, operated or owned by an existing Gauley
River licensee; (v) that the applicant has no common ownership
with an existing Gauley River licensee; and (vi) that the
economic benefit represented by the award of a Gauley River
license will serve to assist the promotion of tourism and the
delivery of outfitting services beyond Fayette and Nicholas
counties. In authorizing the issuance of an additional Gauley
River license, it is the intention of the Legislature that the
commission not increase the carrying capacity of a current
Gauley River licensee, but that the commission promote and
maintain competition among licensees by increasing the
number of independent outfitters operating on the Gauley;

(4) To commission such studies as are necessary to deter-
mine the physical carrying capacity and monitor the levels of
use on the New, Gauley, Cheat, Shenandoah and Tygart rivers
and how each relates to the overall quality of the rafting
experience, the economic impact of rafting, tourism and
employment in the state and the safety of the general public:
Provided, That if, during a study period, the commission deems
that overcrowding is not a problem on any whitewater zone on
the Cheat, Shenandoah and Tygart rivers, or on the New River
upstream of the confluence of the Greenbrier and New rivers
and on the Gauley River upstream of the Summersville Dam,
then it may issue a license;

(5) Based on the findings of a study of the carrying capacity
of a river, to formulate rational criteria for an allocation
methodology for the river subject to the study, including, but
not limited to, a minimum allocation for each river studied;

(6) To immediately implement a freeze on mandated
changes in use allocations for the licenses of existing licensees
on moratorium sections of the Gauley and New rivers as
defined in subsection (d) of this section. All such licenses shall
carry the use allocation in effect on the second day of May, one
thousand nine hundred ninety-two. The commission shall
implement allocation methodologies for other rivers as the
commission, after appropriate study, may deem necessary with
all such allocation methodologies implemented by rules promulgated pursuant to chapter twenty-nine-a of this code;

(7) To determine administrative policies relating to regulation of the whitewater industry and to administer such policies, except that the commission shall delegate to the director of the division of natural resources or his or her designee the authority to administer the day-to-day responsibilities of the commission pursuant to this section and may vest in the director of the division of natural resources or his or her designee the authority to make determinations with respect to which it is not practicable to convene or to poll the commission, within guidelines established by the commission;

(8) To review all contracts or agreements with governmental agencies related to whitewater studies or regulation, and any negotiations related thereto;

(9) To verify reports by outfitters of numbers of river users and guides, to monitor the extent of the crowding conditions on the rivers and to establish a system for reporting the number of river users and guides on each whitewater expedition;

(10) To regulate the issuance, transfer, and renewal of licenses. However, licenses issued to commercial whitewater outfitters or use allocations or other privileges conferred by a license may be transferred, sold, offered as security to financial institutions or otherwise encumbered, upon notice in writing to the commission and the director of the division of natural resources, subject to the following limitations: (i) The commission may refuse a transfer upon a finding that there is reasonable cause to believe that the safety of members of the public may be adversely affected by the transfer; and (ii) the commission shall require that taxes, workers' compensation and other obligations due the state be paid prior to any transfer;

(11) To collect, for the duration of a study period established in subdivision (4) of this subsection, an annual license fee of five hundred dollars for each river on which a commercial whitewater outfitter operates. The annual per river license fee is limited to the Cheat, Gauley, New, Shenandoah and Tygart rivers. The annual license fee for a commercial white-
A commercial whitewater outfitter who is operating on a river designated in this subdivision and who has paid the annual per river license fee may not be required to pay an additional annual license fee to operate on a nondesignated river. The commercial whitewater outfitter license shall be issued by the commission and is for a period of ten years: Provided, That an outfitter pays the required annual license fee. If an outfitter fails to pay the license fee, then the license shall be suspended until the license fee is paid. Licenses are subject to the bonding provisions set forth in section twenty-three-d of this article and the revocation provisions set forth in the rules promulgated by the director of the division of natural resources. License fees shall be used by the division of natural resources for the purpose of enforcing and administering the provisions of this section;

(12) To establish a special study and improvement fee to be paid by outfitters and to establish procedures for the collection and enforcement of the special study and improvement fee;

(13) To establish a procedure for hearings on violations of this section and rules promulgated thereunder and to establish civil penalties for violations of this section and rules promulgated thereunder; and

(14) To approve rules promulgated by the director of the division of natural resources pursuant to chapter twenty-nine-a of this code, with respect to commercial whitewater outfitters operating upon the waters of the state, whether or not such waters have been designated whitewater zones, which relate to: (i) Minimum safety requirements for equipment; (ii) standards for the size of rafts and number of persons which may be transported in any one raft; (iii) qualifications of commercial whitewater guides; and, with respect to waters designated whitewater zones, (iv) standards for the number of rafts and number of persons transported in rafts.

(c) The commission shall meet upon the call of the chairperson or a majority of the members of the commission.
However, the commission shall meet at least quarterly and shall conduct business when a majority of the members are present. At the meetings, the commission shall review all data, materials and relevant findings compiled relating to any investigation and study then under consideration and, as soon as practicable thereafter, the commission may recommend rules to govern and apply to the designated whitewater zone(s). The commission may meet at its discretion for the purpose of considering and adjusting allocations and review fees and proposed expenditures. A budget shall be approved for each fiscal year for the expenditure of funds subject to the commission’s control. The commission may not limit the number of commercial whitewater outfitters operating on rivers not designated as whitewater zones, nor may the commission limit the number of rafts or total number of persons transported in rafts by commercial whitewater outfitters on rivers not designated as whitewater zones. Commission members shall be reimbursed all reasonable and necessary expenses incurred in the exercise of their duties.

(d) Special provisions for the New River and the Gauley River:

(1) After the issuance of the Gauley River rafting license provided for in subdivision (3), subsection (b) of this section, a moratorium shall be imposed by the commission upon the issuance of additional commercial rafting licenses on whitewater zones of the New River between the confluence of the Greenbrier and New rivers and the confluence of the New and Gauley rivers and upon whitewater zones of the Gauley River from the Summersville Dam to the confluence of the New and Gauley rivers. The moratorium hereby imposed shall continue until such time as the commission is authorized by the Legislature to discontinue the moratorium.

(2) For the portions of the Gauley and New rivers subject to the moratorium imposed by this section, the minimum use allocation conferred by a license is one hundred twenty for each designated section of a whitewater zone on the Gauley and one hundred fifty for each designated section of a whitewater zone on the New River. A licensee who held a use allocation on the second day of May, one thousand nine hundred ninety-two,
with a use allocation greater than the minimum allocation
established in this subdivision shall retain such use allocation
on each designated section of a whitewater zone on the morato-
rium portions of the New and Gauley rivers subject only to the
sale, loss or forfeiture of the license or to a subsequent action of
the commission imposing a reduction in use allocations
pursuant to subdivision (4) of this subsection. The commission
is authorized to increase or decrease minimum use allocations
for the moratorium sections of the New and Gauley rivers only
in accordance with the provisions of subdivisions (4).and (5) of
this subsection. The commission may permit additional
allocations or licenses for whitewater outfitters which are
nonprofit entities operating upon the waters of the state upon
the effective date of this section. Except as provided in subdivi-
sion (4), subsection (d) of this section, nothing in this section
shall be deemed to require the reduction of a use allocation
granted under an existing license or to prohibit a commercial
whitewater outfitter from acquiring a license with a use
allocation in excess of the minimum allocations hereby
established: Provided, That if a licensee has sold, leased or
assigned his license, or sold or leased a portion of the use
allocation under his license, nothing herein shall be deemed to
have the effect of increasing the use allocation assigned to such
license.

(3) The commission may permit peak-day variances from
license limitations not exceeding ten percent of the use alloca-
tion granted under a license. The commission may permit off-
peak-day variances from license limitations not exceeding
twenty-five percent of the use allocation granted under a
license.

(4) If, as result of a study employing the limits of accept-
able change process, the whitewater commission acts to reduce
the aggregate maximum daily use limit for all commercial
rafting licenses on a section of the New River or Gauley River
subject to the license moratorium, the reduction shall be
distributed on a pro-rata basis among all licenses granted for the
section in proportion to an individual license's relative share of
the total use allocation for such river section.
(5) If the limits of acceptable change process results in an increase in the aggregate maximum daily use limit for all commercial rafting licenses on any section of the New River or Gauley River subject to a moratorium on new licenses, such increase shall be divided by the total number of commercial rafting licenses issued for the relevant section of river and the minimum use allocation for each such license shall be increased by the nearest whole number resulting from the division.

(6) If any party contracts to purchase a license containing a use allocation for a moratorium section of the New River or the Gauley River, or if a licensee has obtained, or in the future shall obtain additional use allocations for a moratorium section by lease or purchase from another licensee, the commission shall permit the transfer of such license rights in accordance with the provisions of subdivision (10), subsection (b) of this section. Unless the owners of a license otherwise agree, when two or more licensees share ownership or control of the use allocation assigned to a license, any increase or decrease in use allocations which results from an action of the commission under subdivisions (4) and (5) of this subsection shall be distributed by the commission between such owners in proportion to their ownership or control of the use allocation assigned to such license.

(e) In the event the commission determines through an appropriate study and the limits of acceptable change process that a whitewater zone or a designated section of a whitewater zone on waters other than the moratorium sections of the New and Gauley rivers requires implementation of use allocations, all whitewater rafting licenses issued for such zone or section thereof shall be given the same use allocation.

(f) Violation of this section or any rule promulgated pursuant to this section constitutes a misdemeanor punishable by the penalties set forth in section twenty-three-d of this article.

(g) The director of the division of natural resources shall promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, all rules necessary to effectuate the purposes of
This section and these rules must be approved by the commission. The division of natural resources shall enforce the provisions of this section and rules promulgated pursuant to this section, and shall provide necessary staff and support services to the commission to effectuate the purposes of this section.

(h) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective pursuant to any prior enactments of this section by the governor, the secretary of the department of commerce, labor and environmental resources, the director of the division of natural resources, the whitewater advisory board or by a court of competent jurisdiction, and which are in effect on the effective date of this section, shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked by the governor, secretary, director or commission pursuant to this section, by a court of competent jurisdiction, or by operation of law.

20-2-23e. Implementation of allocation methodology.

Other provisions of this article notwithstanding, the implementation of an allocation methodology for the nonmoratorium whitewater zones of the New, Gauley, Cheat, Shenandoah and Tygart rivers, shall be made based upon criteria identified in existing or future studies of carrying capacity, the overall economic impact on the state and the safety of the general public as identified in section twenty-three-a of this article, and shall be implemented at such time as the commission deems appropriate, by rules promulgated pursuant to chapter twenty-nine-a of this code. In determining whether to increase or decrease existing use allocations on the portions of the New and Gauley rivers subjected to a moratorium on new licenses by this article, the commission may continue existing studies and undertake new studies of the carrying capacity of whitewater zones, the quality of the rafting experience, the economic impact of rafting and the safety of the general public.
ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

21-5C-1. Definitions.

As used in this article:

(a) "Commissioner" means the commissioner of labor or his duly authorized representatives.

(b) "Wage and hour director" means the wage and hour director appointed by the commissioner of labor as chief of the wage and hour division.

(c) "Wage" means compensation due an employee by reason of his employment.

(d) "Employ" means to hire or permit to work.

(e) "Employer" includes the state of West Virginia, its agencies, departments and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct and permanent location or business establishment: Provided, That the term "employer" shall not include any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent of the persons employed by him are subject to any federal act relating to minimum wage, maximum hours and overtime compensation.

(f) "Employee" includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his parent, son,
daughter or spouse; (6) any individual employed in a bona fide professional, executive or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person sixty-two years of age or over who receives old-age or survivors benefits from the social security administration; (11) any individual employed in agriculture as the word agriculture is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a fire fighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, parts man or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the United States department of transportation has statutory authority to establish qualifications and maximum hours of service; (18) any person employed on a per diem basis by the Senate, the House of Delegates, or the joint committee on government and finance of the Legislature of West Virginia, other employees of the Senate or House of Delegates designated by the presiding officer thereof, and additional employees of the joint committee on government and finance designated by such joint committee; or (19) any person employed as a seasonal employee of a commercial whitewater outfitter where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the maximum wage provisions of section three of this article.

(g) "Workweek" means a regularly recurring period of one hundred sixty-eight hours in the form of seven consecutive
(h) "Hours worked", in determining for the purposes of sections two and three of this article, the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday, time spent in walking, riding or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform and activities which are preliminary to or postliminary to said principal activity or activities, subject to such exceptions as the commissioner may by rules and regulations define.

CHAPTER 293

(H. B. 2732 — By Delegates Douglas, Collins, Prunty, H. White, Hatfield, Butcher and Stalnaker)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]
(a) The commissioner of the bureau of employment programs appointed under the provisions of section one, article two, chapter twenty-one-a of this code, has the sole responsibility for the administration of this chapter except for such matters as are entrusted to the compensation programs performance council created pursuant to section one, article three, chapter twenty-one-a of this code. In the administration of this chapter, the commissioner shall exercise all the powers and duties described in this chapter and in article two, chapter twenty-one-a of this code.

(b) The commissioner is authorized to promulgate rules and regulations to implement the provisions of this chapter.

(c) The commissioner shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words “West Virginia Commissioner of Employment Programs” and such other design as the commissioner may prescribe. The courts in this state shall take judicial notice of the seal of the commissioner and in all cases copies of orders, proceedings or records in the office of the West Virginia commissioner of employment programs shall be equal to the original in evidence.

(d) Pursuant to the provisions of article ten, chapter four of this code, the commissioner of the bureau of employment programs shall continue to administer this chapter until the first day of July, two thousand.

(e) The attorney general shall perform all legal services required by the commissioner under the provisions of this chapter: Provided, That in any case in which an application for review is prosecuted from any final decision of the workers' compensation appeal board to the supreme court of appeals, as provided by section four, article five of this chapter, or in any court proceeding before the workers' compensation appeal board, or in any proceedings before the office of judges, or in any case in which a petition for an extraordinary writ is filed in the supreme court of appeals or in any circuit court, in which such representation shall appear to the commissioner to be desirable, the commissioner may designate a regular employee
of this office, qualified to practice before such court to repre-
sent the commissioner upon such appeal or proceeding, and in
no case shall the person so appearing for the commissioner
before the court receive remuneration therefor other than such
person’s regular salary.

CHAPTER 294

(Com. Sub. for S. B. 579 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 8, 1999; in effect from passage. Approved by the Governor.]

AN ACT to repeal section sixteen, article one, chapter twenty-three
of the code of West Virginia, one thousand nine hundred thirty-
one, as amended; to repeal sections three-a and nineteen, article
four of said chapter; to amend and reenact sections two, five, five-
d, thirteen, fourteen and fifteen, article two of said chapter; to
further amend said article by adding thereto a new section,
designated section five-b; to amend and reenact section four,
article three of said chapter; to amend and reenact sections six,
eight-a, nine and ten, article four of said chapter; to amend and
reenact sections seven and nine, article five of said chapter; to
amend article six of said chapter by adding thereto two new
sections, designated sections two and three; and to amend article
three, chapter sixty-one of said code by adding thereto four new
sections, designated sections twenty-four-e, twenty-four-f,
twenty-four-g and twenty-four-h, all relating generally to
workers’ compensation and reform thereof; providing that
information obtained from the state tax commissioner and the
unemployment compensation division may be used to determine
employment status; eliminating penalty premium tax; modifying
the method of calculating penalties for late reporting and other
improprieties; providing for premium tax settlements and relief
from accrued interest and penalties; authorizing compensation
programs performance council to review and approve write-off of
uncollectible receivables; modifying interest rate on past-due
payments; providing that certain deposits and disbursements are
abandoned property and providing for the disposition thereof;
modifying the method of compensating the interdisciplinary
examining board and confirming the duties thereof; lowering the
threshold for consideration of a permanent total disability award
to forty percent medical impairment or thirty-five percent
disability based on statutory schedule; clarifying appointment and
compensation of the occupational pneumoconiosis board;
restoring terminated provisions establishing physical and voca­
tional rehabilitation program; restoring the one hundred four
weeks benefit to dependents of deceased permanent total disabil­
ity award recipients; authorizing lump sum or periodic payment
of such benefits; providing that employers not be directly charged
with the experience of such award; modifying compromise and
settlement procedures of workers’ compensation claims; provid­
ing for review of claim settlements by the office of judges;
requiring the office of judges to provide written notice of
settlement to parties, the appeal board or the supreme court of
appeals; precluding the reopening of settlement issues; revising
hearing procedures on objections to workers’ compensation
decisions; providing that objections be filed with the office of
judges; requiring the office of judges to promulgate a rule
establishing an adjudicatory process; eliminating reference to
authorized hearing locations; providing for ten days’ notice of
hearings; eliminating requirement to hold hearing within thirty
days; revising record requirements; removing requirement that
office of judges’ decisions be rendered within thirty days; setting
forth legislative intent that compensation programs performance
council consider employer rate reductions commensurate with
cost of employee benefits; establishing operative date of certain
provisions; clarifying and strengthening criminal penalties for any
person who knowingly and willfully fails to subscribe to the
workers’ compensation fund, fails to pay premium taxes, fails to
file premium tax reports, fails to file other reports or makes a
false report or statement under oath; providing that certain
property is subject to forfeiture; imposing costs to accomplish
forfeiture on person convicted; clarifying and strengthening
criminal penalties for any person who knowingly and with
fraudulent intent secures or attempts to secure workers’ compen-
sation to which they are not entitled or who knowingly and willfully makes a false report under oath; authorizing restitution and termination of benefits; clarifying and strengthening criminal penalties for knowingly and willfully committing certain fraudulent offenses in connection with the delivery of or payment for workers' compensation health care benefits, items or services; barring persons from providing future services; terminating payments for such services; providing that certain property is subject to forfeiture; imposing costs to accomplish forfeiture on person convicted; and establishing criminal penalties for any person who provides false information with the intent to defraud workers' compensation or who alters documents or certificates to indicate good standing with workers' compensation.

Be it enacted by the Legislature of West Virginia:

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

Chapter
23. Workers' Compensation.
61. Crimes and Their Punishment.

CHAPTER 23. WORKERS' COMPENSATION.

Article
2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.
3. Workers' Compensation Fund.
4. Disability and Death Benefits.
5. Review.
6. Severability; Legislative Intent; Operative Date.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;
EXTRATERRITORIAL COVERAGE.

§23-2-2. Commissioner to be furnished information by employers, state tax
commissioner and division of unemployment compensation; secrecy
of information; examination of employers, etc.; violation a misde­
meanor.

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

§23-2-5b. Premium tax default settlements; relief from liability for accrued interest
and penalties; repayment terms and conditions; reinstatement to good
standing; voided reinstatement agreements.

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


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

§23-2-15. Liabilities of successor employer; waiver of payment by division;
assignment of predecessor employer’s premium rate to successor.

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

(a) Every employer shall furnish the commissioner, upon
request, all information required by him or her to carry out the
purposes of this chapter. The commissioner, or any person
employed by the commissioner for that purpose, shall have the
right to examine under oath any employer or officer, agent or
employee of any employer.

(b) Notwithstanding the provisions of any other statute,
specifically, but not exclusively, sections five and five-b, article
ten, chapter eleven of this code, and section eleven, article ten,
chapter twenty-one-a of this code the commissioner of the
bureau of employment programs may receive the following
information:
(1) Upon written request to the state tax commissioner: The names, addresses, places of business and other identifying information of all businesses receiving a business franchise registration certificate and the dates thereof; and the names and social security numbers or other tax identification numbers of the businesses and of the businesses' workers and employees, if otherwise collected, and the quarterly and annual gross wages or other compensation paid to the workers and employees of such businesses reported pursuant to the requirement of withholding of tax on income.

(2) Upon written application to the division of unemployment compensation: In addition to the information that may be released to the division of workers' compensation for the purposes of this chapter under the provisions of chapter twenty-one-a of this code, the names, addresses and other identifying information of all employing units filing reports and information pursuant to section eleven, article ten, chapter twenty-one-a of this code as well as information contained in those reports regarding the number and names, addresses and social security numbers of employees employed and the gross quarterly wages paid by each employing unit to each identified employee.

(c) All information acquired by the division of workers' compensation pursuant to subsection (b) of this section shall be used only for auditing premium payments, assisting in the determination of employment status, and registering businesses under the single point of registration program as defined in section two, article one, chapter eleven of this code. The division of workers' compensation, upon receiving the business franchise registration certificate information made available pursuant to subsection (b) of this section, shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms to register the business under the provisions of this article. Any officer or employee of this state who uses the aforementioned information in any manner other than the one stated herein or elsewhere authorized in this code, or who divulges or makes known in any manner any of the aforementioned information shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more
than one thousand dollars or imprisoned in the county jail for
not more than one year, or both, together with cost of prosecu-
tion.

(d) Reasonable costs of compilation and production of any
information made available pursuant to subsection (b) of this
section shall be charged to the division of workers’ compensa-
tion.

(e) Information acquired by the commissioner pursuant to
subsection (b) of this section shall not be subject to disclosure
under the provisions of chapter twenty-nine-b of this code.

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

(a) For the purpose of creating a workers’ compensation
fund, each employer who is required to subscribe to the fund or
who elects to subscribe to the fund shall pay premium taxes
calculated as a percentage of the employer’s gross wages
payroll at the rate determined by the workers’ compensation
division and then in effect. At the time each employer sub-
scribes to the fund, the application required by the division shall
be filed and a premium deposit equal to the first quarter’s
estimated premium tax payment shall be remitted. The mini-
mum quarterly premium to be paid by any employer shall be
twenty-five dollars.

(1) Thereafter, premium taxes shall be paid quarterly on or
before the last day of the month following the end of the
quarter, and shall be the prescribed percentage of the entire
gross wages of all employees, from which net payroll is
calculated and paid, during the preceding quarter. The division
may permit employers who qualify under the provisions of
rules promulgated by the compensation programs performance
council to report gross wages and pay premium taxes at other
intervals.

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

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

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

(5) The division may encourage employer efforts to create and maintain safe workplaces, to encourage loss prevention programs, and to encourage employer provided wellness programs, through the normal operation of the experience rating formula, seminars and other public presentations, the development of model safety programs and other initiatives as may be determined by the commissioner and the compensation programs performance council.

(b) Failure of an employer to timely pay premium taxes, to timely file a payroll report or to maintain an adequate premium deposit, shall cause the employer's account to become delinquent. No employer will be declared delinquent or be assessed
any penalty therefor if the division determines that such
delinquency has been caused by delays in the administration of
the fund. The division shall, in writing, within sixty days of the
end of each quarter notify all delinquent employers of their
failure to timely pay premium taxes, to timely file a payroll
report or to maintain an adequate premium deposit. Each
employer who shall fail to timely file any quarterly payroll
report or timely pay the premium tax due with such report, or
both, for any quarter commencing on and after the first day of
July, one thousand nine hundred ninety-five, shall pay a late
reporting or payment penalty of the greater of fifty dollars or a
sum obtained by multiplying the premium tax due with such
report by the penalty rate applicable to that quarter. The penalty
rate to be used in a workers’ compensation division’s fiscal year
shall be calculated annually on the first day of each fiscal year.
The penalty rate used to calculate the penalty for each quarter
in a fiscal year is the quotient, rounded to the nearest higher
whole number percentage rate, obtained by dividing the sum of
the prime rate plus four percent by four. The prime rate shall be
the rate published in the *Wall Street Journal* on the last business
day of the division’s prior fiscal year reflecting the base rate on
corporate loans posted by at least seventy-five percent of the
nation’s thirty largest banks. Such late penalty shall be paid
with the most recent quarter’s report and payment and is due
when that quarter’s report and payment are filed. If such late
penalty is not paid when due, the same may be charged to and
collected by the division from the employer’s premium deposit
account or otherwise as provided for by law. The notification
shall demand the filing of the delinquent payroll report and
payment of delinquent premium taxes, the penalty for late
reporting or payment of premium taxes or premium deposit, the
interest penalty and an amount sufficient to maintain the
premium deposit, before the end of the third month following
the end of the preceding quarter. Interest shall accrue and be
charged on the delinquent premium payment and premium
deposit pursuant to section thirteen of this article.

(c) Whenever the division notifies an employer of the
delinquent status of its account, the notification shall explain
the legal consequence of subsequent default by an employer
(d) Failure by the employer, who is required to subscribe to the fund and who fails to resolve the delinquency within the prescribed period, shall place the account in default and shall deprive such default employer of the benefits and protection afforded by this chapter, including section six of this article, and the employer shall be liable as provided in section eight of this article. The default employer's liability under said sections shall be retroactive to midnight of the last day of the month following the end of the quarter for which the delinquency occurs. The division shall notify the default employer of the method by which the employer may be reinstated with the fund. The division shall also notify the employees of such employer by written notice as hereinafter provided for in this section.

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

(f) (1) Except as provided for in subdivision (3) of this subsection, any employer who is required to subscribe to the fund and who is in default on the effective date of this section or who subsequently defaults, and any employer who has elected to subscribe to the fund and who defaults and whose account is terminated prior to the effective date of this section or whose account is subsequently terminated, shall be restored immediately to the benefits and protection of this chapter only.
upon the filing of all delinquent payroll and other reports required by the division and payment into the fund of all unpaid premiums, an adequate premium deposit, accrued interest and the penalty for late reporting and payment. Interest shall be calculated as provided for by section thirteen of this article.

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

(2) The division shall have the authority to restore a defaulted or terminated employer through a reinstatement agreement. Such reinstatement agreement shall require the payment in full of all premium taxes, premium deposits, the penalty for late reporting and payment, past accrued interest and future interest calculated pursuant to the provisions of section thirteen of this article. Notwithstanding the filing of a reinstatement application or the entering into of a reinstatement agreement, the division is authorized to file a lien against the employer as provided by section five-a of this article. In addition, entry into a reinstatement agreement is discretionary with the division. Such discretion shall be exercised in keeping with the fiduciary obligations owed to the workers' compensation fund. Should the division decline to enter into a reinstatement agreement and should the employer not comply with the provisions of subdivision (1) of this subsection, then the division may proceed with any of the collection efforts provided for by section five-a of this article or as otherwise provided for by this code. Applications for reinstatement shall:

(A) Be made upon forms prescribed by the division; (B) include a report of the gross wages payroll of the employer which had not been reported to the division during the entire period of delinquency and default, which gross wages information shall be certified by the employer or its authorized agent; and (C) include a payment of a portion of the liability equal to one half of one percent of the gross payroll during the period of delinquency and default or equal to another portion of the liability as may be determined from time to time by rule but not to exceed the amount of the entire liability due and owing for the period of delinquency and default. An employer who applies for
reinstatement shall be entitled to the benefits and protection of this chapter on the day a properly completed and acceptable application which is accompanied by the application payment is received by the division: Provided, That if the division reinstates an employer subject to the terms of a reinstatement agreement, the subsequent failure of the employer to make scheduled payments or to pay accrued or future interest in accordance with the reinstatement agreement or to timely file current quarterly reports and to pay current quarterly premiums within the month following the end of the quarter for which the report and payment are due, or to otherwise maintain its account in good standing or, if the reinstatement agreement does not require earlier restoration of the premium deposit, to restore the premium deposit to the required amount by the end of the repayment period shall cause the reinstatement application and the reinstatement agreement to be null, void and of no effect, and the employer shall be denied the benefits and protection of this chapter effective from the date that such employer’s account originally became delinquent.

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

(4) Following any failure of an employer to comply with the provisions of a reinstatement agreement, the division may then make and continue with any of the collection efforts provided for by this chapter or elsewhere in this code even if the employer files another reinstatement application.

(g) With the exception noted in subsection (h), section one of this article, no employee of an employer required by this chapter to subscribe to the workers' compensation fund shall be denied benefits provided by this chapter because the employer failed to subscribe or because the employer's account is either
(h) (1) The provisions of this section shall not deprive any individual of any cause of action which has accrued as a result of an injury or death which occurred during any period of delinquency not resolved in accordance with the provisions of this article, or subsequent failure to comply with the terms of the repayment agreement.

(2) Upon withdrawal from the fund or termination of election of any employer, the employer shall be refunded the balance due the employer of its deposit, after deducting all amounts owed by the employer to the workers’ compensation fund and other agencies of this state, and the division shall notify the employees of such employer of said termination in such manner as the division may deem best and sufficient.

(3) Notice to employees in this section provided for shall be given by posting written notice that the employer is defaulted under the compensation law of West Virginia, and in the case of employers required by this chapter to subscribe and pay premiums to the fund, that the defaulted employer is liable to its employees for injury or death, both in workers’ compensation benefits and in damages at common law or by statute; and in the case of employers not required by this chapter to subscribe and pay premiums to the fund, but voluntarily electing to do so as herein provided, that neither the employer nor the employees of such employer are protected by said laws as to any injury or death sustained after the date specified in said notice. Such notice shall be in the form prescribed by the division and shall be posted in a conspicuous place at the chief works of the employer, as the same appear in records of the division. If said chief works of the employer cannot be found or identified, then said notices shall be posted at the front door of the courthouse of the county in which said chief works are located, according to the division’s records. Any person who shall, prior to the reinstatement of said employer, as hereinbefore provided for, or prior to sixty days after the posting of said notice, whichever shall first occur, remove, deface or render illegible said notice, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined one thousand dollars, and said notice shall state
this provision upon its face. The division may require any sheriff, deputy sheriff, constable or other official of the state of West Virginia, who may be authorized to serve civil process, to post such notice and to make return thereof of the fact of such posting to the division, and any failure of such officer to post any notice within ten days after he or she shall have received the same from the division, without just cause or excuse, shall constitute a willful failure or refusal to perform a duty required of him or her by law within the meaning of section twenty-eight, article five, chapter sixty-one of this code. Any person actually injured by reason of such failure shall have an action against said official, and upon any official bond he or she may have given, for such damages as such person may actually have incurred, but not to exceed, in the case of any surety upon said bond, the amount of the penalty of said bond. Any official posting said notice as herein required shall be entitled to the same fee as is now or may hereafter be provided for the service of process in suits instituted in courts of record in the state of West Virginia, which fee shall be paid by the division out of any funds at its disposal, but shall be charged by the division against the account of the employer to whose delinquency such notice relates.

§23-2-5b. Premium tax default settlements; relief from liability for accrued interest and penalties; repayment terms and conditions; reinstatement to good standing; voided reinstatement agreements.

The Legislature hereby declares that it is the purpose of this section to provide any employer who is in default as of the effective date of this section in any payment due pursuant to the provisions of this article an opportunity to settle the amount of the default in accordance with the provisions hereinafter set forth. For the purposes of this section, the term “default” applies to any failure by an employer to subscribe to or pay premium taxes that are attributable to the quarter ended on the thirty-first day of December, one thousand nine hundred ninety-eight or quarters ended before that date. In addition, for the purposes of this section, “employer” means any corporation, partnership, limited liability company, sole proprietor, person or other legal entity which is liable or which directly or indirectly may be
held liable as a responsible party for the nonpayment of
premium taxes.

(a) An employer who qualifies under this section will have
six months from the first day of July, one thousand nine
hundred ninety-nine, to apply to the commissioner for a
settlement of the amount of premium taxes, accrued interest and
penalties and any award of attorney’s fees made pursuant to
subdivision (17), section six, article two, chapter twenty-one-a
of this code, owed to the workers’ compensation fund as a
result of the employer’s default on premium tax payments to
the division. Such application shall be made on a form pre-
scribed by the commissioner and may impose on the employer
such obligations and constraints concerning the time and
manner of payment as the commissioner deems necessary to
effectuate the purpose of this section.

(b) Notwithstanding provisions in this article to the
contrary, the employer shall be relieved of liability for the
payment of the interest and penalties which have accrued by
operation of other provisions in this article and shall further be
relieved of liability for payment of any award of attorney’s fees
made pursuant to subdivision (17), section six, article two,
chapter twenty-one-a of this code, by tendering payment in full
of all past-due premium taxes within thirty days from the date
that the commissioner notifies the employer in writing that the
application has been approved: Provided, That in the alterna-
tive, an employer shall be relieved of liability for the payment
of the interest and penalties which have accrued by operation of
other provisions in this article by fulfilling the terms of a
written agreement with the division to pay, within three
hundred sixty-five days from the date upon which the agree-
ment is executed, all past-due premium taxes in monthly
installments which shall include interest on such past-due
premium taxes calculated at the annual percentage rate of nine
percent.

(c) Notwithstanding any provisions in this article to the
contrary, an employer which is remitting payments to the
division pursuant to the terms of an agreement entered into
prior to the effective date of this section may apply to the
commissioner in accordance with subsection (a) of this section
to discharge the remaining balance of its indebtedness to the
division by tendering, within thirty days from the date upon
which the commissioner notifies the employer in writing that
the application has been approved, payment in full for that
portion of the balance which consists of unpaid premium taxes
that are attributable to the quarter ended on the thirty-first day
of December, one thousand nine hundred ninety-eight, or
quarters ended before that date: Provided, That in the alterna-
tive, an employer which is remitting payments to the division
pursuant to the terms of an agreement entered into prior to the
effective date of this section may apply to the commissioner in
accordance with subsection (a) of this section to discharge the
balance of its indebtedness to the division by fulfilling the
terms of a written agreement with the division to pay, within
three hundred sixty-five days from the date upon which the
agreement is executed, all past-due premium taxes in monthly
installments which shall include interest on such past-due
premium taxes calculated at an annual percentage rate of nine
percent.

(d) An employer with which the commissioner is, as of the
effective date of this section, engaged in litigation concerning
the extent to which that employer is liable to the division for
past-due premium taxes, accrued interest and penalties may in
settlement: (1) Tender payment in full for the past-due premium
taxes; or (2) fulfill the terms of a written agreement with the
division to pay, within three hundred sixty-five days from the
date that the agreement is executed, all past-due premium taxes
in monthly installments which shall include interest on such
past-due premium taxes calculated at an annual percentage rate
of nine percent.

(e) An employer shall be reinstated to good standing as of
the date that the employer tenders payment in full for all past-
due premium taxes. An employer who enters into a written
agreement with the division to pay past-due premium taxes in
monthly installments shall be reinstated to good standing as of
the date on which the agreement is executed: Provided, That the
failure of the employer to make scheduled payments in accor-
dance with a repayment agreement entered into under this section may at the discretion of the commissioner cause the repayment agreement to be voided and the employer shall be denied the benefits and protections of this chapter effective from the date of the employer's initial default. In addition, the employer shall be subject to all remedies available to the division pursuant to the provisions of this chapter.

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

Notwithstanding any other provision to the contrary, the division, with the approval of the compensation programs performance council, may write-off any uncollected receivable due under the provisions of this article which the division and the compensation programs performance council deem to be uncollectible.


Effective the first day of July, one thousand nine hundred ninety-nine, payments unpaid on the date on which due and payable shall immediately begin bearing interest as specified hereinafter. The interest rate per annum for each fiscal year shall be calculated as the greater of the division's current discount rate or the prime rate plus four percent, each rounded to the nearest whole percent. The discount rate shall be determined by the compensation programs performance council on an annual basis. The prime rate shall be the rate published in the Wall Street Journal on the last business day of the division's prior fiscal year reflecting the base rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks. This same rate of interest shall be applicable to all reinstatement agreements entered into by the commissioner pursuant to section five of this article on and after the effective date of this section: Provided, That if an employer enters into a subsequent reinstatement agreement within seven years of the date of the first agreement, the interest rate shall be eighteen percent per annum. Interest shall be compounded quarterly until payment plus accrued interest is received by the commissioner: Provided, however, That on and after the date of execution of
a reinstatement agreement, for determining future interest on
any past-due premium, premium deposit, and past compounded
interest thereon, any reinstatement agreement entered into by
the commissioner shall provide for a simple rate of interest,
determined in accordance with the provisions of this section
which shall not be subject to change during the life of the
reinstatement agreement for such future interest. Interest
collected pursuant to this section shall be paid into the workers’
compensation fund: Provided further, That in no event shall the
rate of interest charged a political subdivision of the state or a
volunteer fire department pursuant to this section exceed ten
percent per annum.

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

(a) If any employer shall sell or otherwise transfer substan-
tially all of the employer’s assets, so as to give up substantially
all of the employer’s capacity and ability to continue in the
business in which the employer has previously engaged, then:

(1) Such employer’s premium taxes, premium deposits,
interest and other payments owed to the division shall be due
and owing to the division upon the execution of the agreement
of sale or other transfer;

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

(3) Upon execution of an agreement of sale or other
transfer, as aforesaid, the division shall continue to have a lien,
as provided for in section five-a of this article, against all of the
remaining property of the employer as well as all of the sold or
transferred assets, which lien shall constitute a personal
obligation of the employer.
(b) Notwithstanding any provisions of section five-a of this article to the contrary, in the event that a new employer acquires by sale or other transfer or assumes all or substantially all of a predecessor employer's assets, then:

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

(2) Any liens held by the division against the predecessor employer's property shall be extended to all of the assets of the successor employer; and

(3) Liens acquired in the manner described in subdivisions (1) and (2) of this subsection shall be enforceable by the division to the same extent as provided for the enforcement of liens against the predecessor employer in section five-a of this article.

(c) Notwithstanding the provisions of section five-a of this article to the contrary, if any employer as described in subsection (a) of this section shall sell or otherwise transfer a portion of the employer's assets so as to affect the employer's capacity to do business, then:

(1) Such employer's premium taxes, premium deposits, interest, and other payments owed to the division shall be due and owing to the division upon the execution of the agreement of sale or other transfer;

(2) Any repayment agreement entered into by the employer with the division pursuant to section five of the article shall terminate upon the execution of the aforesaid agreement of sale or other transfer and all amounts owed to the division but not yet paid shall become due; and

(3) Upon execution of an agreement of sale or other transfer, as aforesaid, the division shall continue to have a lien, as provided for in section five-a of this article, against all of the remaining property of the employer as well as all the sold or transferred assets, which lien shall constitute a personal obligation of the employer.
(d) If an employer subject to subsection (a), (b) or (c) of this section pays to the division, prior to the execution of an agreement of sale or other transfer, a sum sufficient to retire all of the indebtedness that the employer would owe at the time of the execution, then the division shall issue a certificate to the employer stating that the employer's account is in good standing with the division and that the assets may be sold or otherwise transferred without the attachment of the division's lien. An agreement of sale or other transfer may provide for the creation of an escrow account into which the employers shall pay the full amount owed to the division. The subsequent timely payment of that full amount to the division shall operate to place both employers in good standing with the division to the extent of the predecessor employer's liabilities retroactive to the date of sale or other transfer. In the event that the employer would not owe any sum to the division on the aforesaid date of execution, then a certificate shall also be issued to the employer upon the employer's request stating that the employer's account is in good standing with the division and that the assets may be sold or otherwise transferred without the attachment of the division's lien.

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

(f) The transfer of any assets of the employer shall be presumed to be a transfer of all or substantially all of the assets if the transfer affects the employer's capacity to do business. The presumption can be overcome upon petition presented and an administrative hearing in accordance with section fifteen of this article and in consideration of the factors thereunder.

(g) The foregoing provisions are expressly intended to impose upon such successor employers the duty of obtaining from the division or predecessor employer, prior to the date of such acquisition, a valid "certificate of good standing to transfer
94 a business or business assets" to verify that the predecessor
95 employer's account with the division is in good standing.

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

1 (a) At any time prior to or following the acquisition
2 described in subsection (a), (b) or (c), section fourteen of this
3 article, the buyer or other recipient may file a certified petition
4 with the division requesting that the division waive the payment
5 by the buyer or other recipient of premiums, premium deposits,
6 interest and imposition of the modified rate of premiums
7 attributable to the predecessor employer or other penalty, or any
8 combination thereof. The division shall review the petition by
9 considering the seven factors set forth below:

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

21 Unless requested by a party or by the division, no hearing
22 need be held on the petition. However, any decision made by
23 the division on the petition shall be in writing and shall include
24 appropriate findings of fact and conclusions of law. Such
decision shall be effective ten days following notice to the
25 public of the decision unless an objection is filed in the manner
26 herein provided. Such notice shall be given by the division's
27 filing with the secretary of state, for publication in the state
28 register, of a notice of the decision. At the time of filing the
notice of its decision, the division shall also file with the secretary of state a true copy of the decision. The publication shall include a statement advising that any person objecting to the decision must file, within ten days after publication of the notice, a verified response with the division setting forth the objection and the basis therefor. If any such objection is filed, the division shall hold an administrative hearing, conducted pursuant to article five, chapter twenty-nine-a of this code, within fifteen days of receiving the response unless the buyer or other recipient consents to a later hearing. Nothing in this subsection shall be construed to be applicable to the seller or other transferor or to affect in any way a proceeding under sections five and five-a of this article.

(b) In the factual situations set forth in subsection (a), (b) or (c), section fourteen of this article, if the predecessor’s modified rate of premium tax, as calculated in accordance with section four of this article, is greater than the manual rate of premium tax, as calculated in accordance with said section, for other employers in the same class or group, then, if the new employer does not already have a modified rate of premium, it shall also assume the predecessor employer’s modified rates for the payment of premiums as determined under sections four and five of this article until sufficient time has elapsed for the new employer’s experience record to be combined with the experience record of the predecessor employer so as to calculate the new employer’s own modified rate of premium tax.

ARTICLE 3. WORKERS’ COMPENSATION FUND.

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

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

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

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

§23-4-8a. Occupational pneumoconiosis board--Compensation; term of office;
duties; quorum; remuneration.

§23-4-9. Physical and vocational rehabilitation.

§23-4-10. Classification of death benefits; "dependent" defined.

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

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

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

(b) If the injury causes temporary total disability, the
employee shall receive during the continuance thereof a
maximum weekly benefit to be computed on the basis of
seventy percent of the average weekly wage earnings, wherever
earned, of the injured employee, at the date of injury, not to
exceed one hundred percent of the average weekly wage in
West Virginia: Provided, That in the case of a claimant whose
injury occurred prior to the second day of February, one
thousand nine hundred ninety-five, the maximum benefit rate
shall be the rate applied under the prior enactment of this
subsection which was in effect at the time the injury occurred,
and the rate shall not be affected by the amendment and
reenactment of this section during the regular session of the
Legislature in the year one thousand nine hundred ninety-five.
The minimum weekly benefits paid hereunder shall not be less
than thirty-three and one-third percent of the average weekly
wage in West Virginia, except as provided in section six-d and
section nine of this article. In no event, however, shall such
minimum weekly benefits exceed the level of benefits deter-
dined by use of the then applicable federal minimum hourly
wage: Provided, however, That any claimant receiving perma-
nent total disability benefits, permanent partial disability
benefits or dependents’ benefits prior to the first day of July,
one thousand nine hundred ninety-four, shall not have his or her
benefits reduced based upon the requirement herein that the
minimum weekly benefit shall not exceed the applicable federal
minimum hourly wage.

(c) Subdivision (b) of this section shall be limited as
follows: Aggregate award for a single injury causing temporary
disability shall be for a period not exceeding two hundred eight
weeks.

(d) For all awards of permanent total disability benefits that
are made on or after the second day of February, one thousand
nine hundred ninety-five, including those claims in which a
request for an award was pending before the division or which
were in litigation but not yet submitted for a decision, then
benefits shall be payable until the claimant attains the age
necessary to receive federal old age retirement benefits under
the provisions of the Social Security Act, 42 U. S. C. 401 and
402, in effect on the effective date of this section. Such a
claimant shall be paid benefits so as not to exceed a maximum
benefit of sixty-six and two-thirds percent of the claimant’s
average weekly wage earnings, wherever earned, at the time of
the date of injury not to exceed one hundred percent of the
average weekly wage in West Virginia. The minimum weekly
benefits paid hereunder shall be as is provided for in subdivi-
section (b) of this section. In all claims in which an award for
permanent total disability benefits was made prior to the second
day of February, one thousand nine hundred ninety-five, such
awards shall continue to be paid at the rate in effect prior to the
said date, subject to annual adjustments for changes in the
average weekly wage in West Virginia: Provided, That the
provisions of sections one through eight, article four-a of this
chapter shall be applied thereafter to all such prior awards that
were previously subject to its provisions. A single or aggregate
permanent disability of eighty-five percent or more shall entitle
the employee to a rebuttable presumption of a permanent total
disability for the purpose of paragraph (2), subdivision (n) of
this section: Provided, however, That the claimant must also be
at least forty percent medically impaired upon a whole body
basis or has sustained a thirty-five percent statutory disability
pursuant to the provisions of subdivision (f) of this section. The
presumption may be rebutted if the evidence establishes that the
claimant is not permanently and totally disabled pursuant to
subdivision (n) of this section. Under no circumstances shall the
division grant an additional permanent disability award to a
claimant receiving a permanent total disability award: Provided
further, That if any claimant thereafter sustains another
compensable injury and has permanent partial disability
resulting therefrom, the total permanent disability award benefit
rate shall be computed at the highest benefit rate justified by
any of the compensable injuries, and the cost of any increase in
the permanent total disability benefit rate shall be paid from the
second injury reserve created by section one, article three of
this chapter.

(e)(1) For all awards made on or after the second day of
February, one thousand nine hundred ninety-five, if the injury
causes permanent disability less than permanent total disability,
the percentage of disability to total disability shall be deter-
mined and the award computed on the basis of four weeks’
compensation for each percent of disability determined, at the
maximum or minimum benefit rates provided for in subdivision
(d) of this section: Provided, That in the case of a claimant
whose injury occurred prior to the second day of February, one
thousand nine hundred ninety-five, the maximum benefit rate shall be the rate applied under the prior enactment of this section which was in effect at the time the injury occurred, and the rate shall not be affected by the amendment and reenactment of this section during the regular session of the Legislature in the year one thousand nine hundred ninety-five.

(2) If a claimant is released by his or her treating physician to return to work at the job he or she held before the occupational injury occurred and if the claimant’s preinjury employer does not offer the preinjury job or a comparable job to the employee when such a position is available to be offered, then the award for the percentage of partial disability shall be computed on the basis of six weeks of compensation for each percent of disability.

(3) The minimum weekly benefit under this subdivision shall be as provided in subdivision (b) of this section for temporary total disability.

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

The loss of a great toe shall be considered a ten percent disability.

The loss of a great toe (one phalanx) shall be considered a five percent disability.

The loss of other toes shall be considered a four percent disability.

The loss of other toes (one phalanx) shall be considered a two percent disability.

The loss of all toes shall be considered a twenty-five percent disability.

The loss of forepart of foot shall be considered a thirty percent disability.
The loss of a foot shall be considered a thirty-five percent disability.

The loss of a leg shall be considered a forty-five percent disability.

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

The loss of thigh at hip joint shall be considered a sixty percent disability.

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

The loss of a little or fourth finger shall be considered a five percent disability.

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

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

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

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

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

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

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

The loss of index and middle finger shall be considered a twenty percent disability.
The loss of middle and ring finger shall be considered a fifteen percent disability.

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

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

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

The loss of middle, ring and little finger shall be considered a twenty percent disability.

The loss of four fingers shall be considered a thirty-two percent disability.

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

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

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

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

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

For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the division, using as a basis the total loss of hearing in both ears.

Should a claimant sustain a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision, die from sickness or
noncompensable injury before the division makes the proper
award for such injury, the division shall make such award to
claimant's dependents as defined in this chapter, if any; such
payment to be made in the same installments that would have
been paid to claimant if living: Provided, That no payment shall
be made to any surviving spouse of such claimant after his or
her remarriage, and that this liability shall not accrue to the
estate of such claimant and shall not be subject to any debts of,
or charges against, such estate.

(g) Should a claimant to whom has been made a permanent
partial award die from sickness or noncompensable injury, the
unpaid balance of such award shall be paid to claimant's
dependents as defined in this chapter, if any; such payment to
be made in the same installments that would have been paid to
claimant if living: Provided, That no payment shall be made to
any surviving spouse of such claimant after his or her remar-
riage, and that this liability shall not accrue to the estate of such
claimant and shall not be subject to any debts of, or charges
against, such estate.

(h) For the purposes of this chapter, a finding of the
occupational pneumoconiosis board shall have the force and
effect of an award.

(i) For the purposes of this chapter, with the exception of
those injuries provided for in subdivision (f) of this section and
in section six-b of this article, the degree of permanent disabili-
ity other than permanent total disability shall be determined
exclusively by the degree of whole body medical impairment
that a claimant has suffered. For those injuries provided for in
subdivision (f) of this section and section six-b of this article,
the degree of disability shall be determined exclusively by the
provisions of said subdivision and said section. The occupa-
tional pneumoconiosis board created pursuant to section eight-a
of this article shall premise its decisions on the degree of
pulmonary function impairment that claimants suffer solely
upon whole body medical impairment. The workers' compensa-
tion division shall adopt standards for the evaluation of claim-
ants and the determination of a claimant's degree of whole body
medical impairment. Once the degree of medical impairment
has been determined, that degree of impairment shall be the
degree of permanent partial disability that shall be awarded to
the claimant. This subdivision shall be applicable to all injuries
incurred and diseases with a date of last exposure on or after the
second day of February, one thousand nine hundred ninety-five,
to all applications for an award of permanent partial disability
made on and after such date, and to all applications for an
award of permanent partial disability that were pending before
the division or pending in litigation but not yet submitted for
decision on and after such date. The prior provisions of this
subdivision shall remain in effect for all other claims.

(j) From a list of names of seven persons submitted to the
commissioner by the health care advisory panel, the commis-
sioner shall appoint an interdisciplinary examining board
consisting of five members to evaluate claimants, including by
examination if the board so elects. The board shall be composed
of three qualified physicians with specialties and expertise
qualifying them to evaluate medical impairment and two
vocational rehabilitation specialists who are qualified to
evaluate the ability of a claimant to perform gainful employ-
ment with or without retraining. One member of the board shall
be designated annually as chairperson by the commissioner.
The term of office of each member of the board shall be six
years and until his or her successor has been appointed and has
qualified: Provided, That two of the persons initially appointed
shall serve a term of six years, two of the remaining persons
shall serve a term of four years and the remaining member shall
serve a term of two years. Any member of the board may be
appointed to any number of terms. Any two physician members
and one vocational rehabilitation specialist member shall
constitute a quorum for the transaction of business. The
commissioner, from time to time, shall fix the compensation to
be paid to each member of the board, and the members shall
also be entitled to reasonable and necessary traveling and other
expenses incurred while actually engaged in the performance of
their duties. The board shall perform the duties and responsibil-
ities as assigned by the provisions of this chapter, consistent
with the administrative policies developed by the commissioner.
with the assistance of the compensation programs performance
council.

(1) Prior to the referral of any issue to the interdisciplinary
examining board, the division shall conduct such examinations
of the claimant as it finds necessary and obtain all pertinent
records concerning the claimant’s medical history and reports
of examinations and forward them to the board at the time of
the referral. The division shall provide adequate notice to the
employer of the filing of the request for a permanent total
disability award and the employer shall be granted an appropri-
ate period in which to respond to the request. The claimant and
the employer may furnish all pertinent information to the board
and shall furnish to the board any information requested by the
board. The claimant and the employer may each submit no
more than one report and opinion regarding each issue present
in a given claim. The employer shall be entitled to have the
claimant examined by medical specialists and vocational
rehabilitation specialists: Provided, That the employer is
entitled to only one such examination on each issue present in
a given claim. Any additional examinations must be approved
by the division and shall be granted only upon a showing of
good cause. The reports from all employer-conducted examina-
tions must be filed with the board and served upon the claimant.
The board may request that those persons who have furnished
reports and opinions regarding a claimant provide it with such
additional information as the board may deem necessary. Both
the claimant and the employer, as well as the division, may
submit reports from experts challenging or supporting the other
reports in the record regardless of whether or not such an expert
examined the claimant or relied solely upon the evidence of
record.

(2) If the board or a quorum thereof elects to examine a
claimant, the individual members shall conduct such examina-
tions as are pertinent to each of their specialties. If a claim
presents an issue beyond the expertise of the board, the board
may obtain advice or evaluations by other specialists. In
addition, if the compensation programs performance council
determines that the number of applications pending before the
board has exceeded the level at which the board can review and make recommendations within a reasonable time, then the council may authorize the commissioner to appoint such additional members to the board as may be necessary to reduce the backlog of applications. Such additional members shall be recommended by the health care advisory panel and the commissioner may make such appointments as he or she chooses from the recommendations. The additional board members shall not serve a set term but shall serve until the council determines that the number of pending applications has been reduced to an acceptable level.

(3) Referrals to the board shall be limited to matters related to the determination of permanent total disability under the provisions of subdivision (n) of this section and to questions related to medical cost containment, utilization review decisions and managed care decisions arising under section three of this article.

(4) In the event the board members elect to examine a claimant, the board shall prepare a report stating the tests, examinations, procedures and other observations that were made, the manner in which each was conducted, and the results of each. The report shall state the findings made by the board and the reasons therefor. Copies of the reports of all such examinations shall be served upon the parties and the division and each shall be given an opportunity to respond in writing to the findings and conclusions stated in the reports.

(5) The board shall state its initial recommendations to the division in writing with an explanation for each such recommendation setting forth the reasons for each. The recommendations shall be served upon the parties and the division and each shall be afforded a thirty-day opportunity to respond in writing to the board regarding the board’s recommendations. The board shall then review any such responses and issue its final recommendations. The final recommendations shall then be effectuated by the entry of an appropriate order by the division.

(6) Except as noted below, objections pursuant to section one, article five of this chapter to any such order shall be
limited in scope to matters within the record developed before the workers' compensation division and the board and shall further be limited to the issue of whether the board properly applied the standards for determining medical impairment, if applicable, and the issue of whether the board's findings are clearly wrong in view of the reliable, probative and substantial evidence on the whole record. Should either party contend that the claimant's condition has changed significantly since the review conducted by the board, the party may file a motion with the administrative law judge, together with a report supporting that assertion. Upon the filing of such motion, the administrative law judge shall cause a copy of the report to be sent to the examining board asking the board to review the report and provide such comments as the board chooses within sixty days of the board's receipt of the report. The board may then either supply such comments or, at the board's discretion, request that the claim be remanded to the board for further review by the board. If remanded, the claimant is not required to submit to further examination by the employer's medical specialists or vocational rehabilitation specialists. Following any such remand, the board shall file its recommendations with the administrative law judge for his or her review. If the board elects to respond with comments, such comments shall be filed with the administrative law judge for his or her review. Following the receipt of either the board's recommendations or comment, the administrative law judge shall then issue a written decision ruling upon the asserted change in the claimant's condition. No additional evidence may be introduced during the review of the objection before the office of judges or elsewhere on appeal: Provided, That each party and the division may submit one written opinion on each issue pertinent to a given claim based upon a review of the evidence of record either challenging or defending the board's findings and conclusions. Thereafter, based upon the evidence then of record, the administrative law judge shall issue a written decision containing his or her findings of fact and conclusions of law regarding each issue involved in the objection.
(k) Compensation payable under any subdivision of this section shall not exceed the maximum nor be less than the weekly benefits specified in subdivision (b) of this section.

(1) Except as otherwise specifically provided in this chapter, temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under subdivision (e) or (f) of this section. Compensation, either temporary total or permanent partial, under this section shall be payable only to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his or her death, if he or she had lived, shall be paid to the dependents of such injured employee if there be such dependents at the time of death.

(m) The following permanent disabilities shall be conclusively presumed to be total in character:

- Loss of both eyes or the sight thereof.
- Loss of both hands or the use thereof.
- Loss of both feet or the use thereof.
- Loss of one hand and one foot or the use thereof.

(n) (1) Other than for those injuries specified in subdivision (m) of this section, in order to be eligible to apply for an award of permanent total disability benefits for all injuries incurred and all diseases, including occupational pneumoconiosis, with a date of last exposure on and after the second day of February, one thousand nine hundred ninety-five, and for all requests for such an award pending before the division on and after the second day of February, one thousand nine hundred ninety-five, a claimant must have been awarded the sum of forty percent in prior permanent partial disability awards, have suffered an occupational injury or disease which results in a finding that the claimant has suffered a medical impairment of forty percent or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section. Upon filing
such an application, the claim will be reevaluated by the
examining board pursuant to subdivision (i) of this section to
determine if he or she has suffered a whole body medical
impairment of forty percent or more resulting from either a
single occupational injury or occupational disease or a com-
bination of occupational injuries and occupational diseases or has
sustained a thirty-five percent statutory disability pursuant to
the provisions of subdivision (f) of this section. A claimant
whose prior permanent partial disability awards total eighty-
five percent or more shall also be examined by the board and
must be found to have suffered a whole body medical impair-
ment of forty percent in order for his or her request to be
eligible for further review. The examining board shall review
the claim as provided for in subdivision (j) of this section. If the
claimant has not suffered whole body medical impairment of at
least forty percent or has sustained a thirty-five percent statu-
tory disability pursuant to the provisions of subdivision (f) of
this section, then the request shall be denied. Upon a finding
that the claimant does have a forty percent whole body medical
impairment or has sustained a thirty-five percent statutory
disability pursuant to the provisions of subdivision (f) of this
section, then the review of the application shall continue as
provided for in the following paragraph of this subdivision.
Those claimants whose prior permanent partial disability
awards total eighty-five percent or more and who have been
found to have a whole body medical impairment of at least
forty percent or have sustained a thirty-five percent statutory
disability pursuant to the provisions of subdivision (f) of this
section shall then be entitled to the rebuttable presumption
created pursuant to subdivision (d) for the remaining issues in
the request. For the purposes of determining whether the
claimant should be awarded permanent total disability benefits
under the second injury provisions of subsection (d), section
one, article three of this chapter, only a combination of occupa-
tional injuries and occupational diseases, including occupa-
tional pneumoconiosis, shall be considered.

(2) A disability which renders the injured employee unable
to engage in substantial gainful activity requiring skills or
abilities comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability. In addition, the vocational standards adopted pursuant to subsection (m), section seven, article three, chapter twenty-one-a of this code shall be considered once they are effective.

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

(A) Eighty percent for the first year;

(B) Seventy percent for the second year;

(C) Sixty percent for the third year; and

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

(4) It is the intent of the Legislature that the amendments to this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-nine which change criteria for an award of permanent total disability benefits be applied retroactively to all injuries incurred and all occupational diseases, including occupational pneumoconiosis, with a date of last exposure on and after the second day of
February, one thousand nine hundred ninety-five, and for all
requests for such an award pending before the division on and
after the second day of February, one thousand nine hundred
ninety-five: Provided, That any claimant whose application for
permanent total disability benefits was rejected on or after the
second day of February, one thousand nine hundred ninety-five,
based on a finding that the claimant: (1) Was not awarded the
sum of fifty percent in prior permanent partial disability
awards; or (2) did not suffer an occupational injury or occupa-
tional disease which resulted in a finding that the claimant has
suffered a medical impairment of fifty percent; or (3) did not
suffer whole body medical impairment of at least fifty percent,
then such claimant may, during the period beginning on the first
day of July, one thousand nine hundred ninety-nine, and ending
on the thirtieth day of September, one thousand nine hundred
ninety-nine, file with the division a petition for reconsideration
of the denial of permanent total disability benefits. After review
of the petition by the division and the examining board, the
division shall enter an appropriate order on the claimant’s
petition for reconsideration.

§23-4-8a. Occupational pneumoconiosis board — Composition;
term of office; duties; quorum; remuneration.

The occupational pneumoconiosis board shall consist of
five licensed physicians, who shall be appointed by the com-
missioner. No person shall be appointed as a member of the
board, or as a consultant thereto, who has not by special study
or experience, or both, acquired special knowledge of pulmo-
nary diseases. All members of the occupational pneumoconiosis
board shall be physicians of good professional standing,
admitted to practice medicine and surgery in this state, and two
of them shall be roentgenologists. One of the board shall be
designated annually as chairman by the commissioner. The
term of office of each member of the board shall be six years.
The five members of the existing board in office on the
effective date of this section shall continue to serve until their
terms expire and until their successors have been appointed and
have qualified. Any member of the board may be appointed to
any number of terms. The function of the board is to determine
all medical questions relating to cases of compensation for occupational pneumoconiosis under the direction and supervision of the commissioner. Any three members of the board constitute a quorum for the transaction of its business, if at least one of the members present is a roentgenologist. The commissioner shall from time to time fix the compensation to be paid each member of the board, and members are also entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties. In fixing the compensation of board members, the commissioner shall take into consideration the number of claimants a member of the board actually examines, the actual time spent by members in discharging their duties and the recommendation of the compensation programs performance council as to reasonable reimbursement per unit of time expended based on comparative data for physicians within the state in the same medical specialties.

§23-4-9. Physical and vocational rehabilitation.

(a) The Legislature hereby finds that it is a goal of the workers' compensation program to assist workers to return to suitable gainful employment after an injury. In order to encourage workers to return to employment and to encourage and assist employers in providing suitable employment to injured employees, it shall be a priority of the commissioner to achieve early identification of individuals likely to need rehabilitation services and to assess the rehabilitation needs of these injured employees. It shall be the goal of rehabilitation to return injured workers to employment which shall be comparable in work and pay to that which the individual performed prior to the injury. If a return to comparable work is not possible, the goal of rehabilitation shall be to return the individual to alternative suitable employment, using all possible alternatives of job modification, restructuring, reassignment and training, so that the individual will return to productivity with his or her employer or, if necessary, with another employer. The Legislature further finds that it is the shared responsibility of the employer, the employee, the physician and the commissioner to
cooperate in the development of a rehabilitation process
designed to promote reemployment for the injured employee.

(b) In cases where an employee has sustained a permanent
disability, or has sustained an injury likely to result in tempo-
rary disability in excess of one hundred twenty days, and such
fact has been determined by the commissioner, the commis-
sioner shall at the earliest possible time determine whether the
employee would be assisted in returning to remunerative
employment with the provision of rehabilitation services and if
the commissioner determines that the employee can be physi-
cally and vocationally rehabilitated and returned to remunera-
tive employment by the provision of rehabilitation services
including, but not limited to, vocational or on-the-job training,
counseling, assistance in obtaining appropriate temporary or
permanent work site, work duties or work hours modification,
by the provision of crutches, artificial limbs, or other approved
mechanical appliances, or medicines, medical, surgical, dental
or hospital treatment, the commissioner shall forthwith develop
a rehabilitation plan for the employee and, after due notice to
the employer, expend such an amount as may be necessary for
the aforesaid purposes: Provided, That such expenditure for
vocational rehabilitation shall not exceed ten thousand dollars
for any one injured employee: Provided, however, That no
payment shall be made for such vocational rehabilitation
purposes as provided in this section unless authorized by the
commissioner prior to the rendering of such physical or
vocational rehabilitation, except that payments shall be made
for reasonable medical expenses without prior authorization if
sufficient evidence exists which would relate the treatment to
the injury and the attending physician or physicians have
requested authorization prior to the rendering of such treatment:
Provided further, That payment for physical rehabilitation,
including the purchase of prosthetic devices and other equip-
ment and training in use of such devices and equipment, shall
be considered expenses within the meaning of section three of
this article and shall be subject to the provisions of sections
three, three-a, three-b and three-c of this article. The provision
of any rehabilitation services shall be pursuant to a rehabilita-
tion plan to be developed and monitored by a rehabilitation professional for each injured employee.

(c) In every case in which the commissioner shall order physical or vocational rehabilitation of a claimant as provided herein, the claimant shall, during the time he or she is receiving any vocational rehabilitation or rehabilitative treatment that renders him or her totally disabled during the period thereof, be compensated on a temporary total disability basis for such period.

(d) In every case in which the claimant returns to gainful employment as part of a rehabilitation plan, and the employee's average weekly wage earnings are less than the average weekly wage earnings earned by the injured employee at the time of the injury, he or she shall receive temporary partial rehabilitation benefits calculated as follows: The temporary partial rehabilitation benefit shall be seventy percent of the difference between the average weekly wage earnings earned at the time of the injury and the average weekly wage earnings earned at the new employment, both to be calculated as provided in sections six, six-d and fourteen of this article as such calculation is performed for temporary total disability benefits, subject to the following limitations: In no event shall such benefits be subject to the minimum benefit amounts required by the provisions of subdivision (b), section six of this article, nor shall such benefits exceed the temporary total disability benefits to which the injured employee would be entitled pursuant to sections six, six-d and fourteen of this article during any period of temporary total disability resulting from the injury in the claim: Provided, That no temporary total disability benefits shall be paid for any period for which temporary partial rehabilitation benefits are paid. The amount of temporary partial rehabilitation benefits payable under this subsection shall be reviewed every ninety days to determine whether the injured employee's average weekly wage in the new employment has changed and, if such change has occurred, the amount of benefits payable hereunder shall be adjusted prospectively. Temporary partial rehabilitation benefits shall only be payable when the injured employee is
(e) The commissioner shall promulgate rules for the purpose of developing a comprehensive rehabilitation program which will assist injured workers to return to suitable gainful employment after an injury in a manner consistent with the provisions and findings of this section. Such rules shall provide definitions for rehabilitation facilities and rehabilitation services pursuant to this section.

(f) The reenactment of the provisions of this section during the regular session of the Legislature in the year one thousand nine hundred ninety-nine is for the purpose of reestablishing the rehabilitation program heretofore created by virtue of the provisions of this section and the rules promulgated pursuant thereto for all injured employees who sustained injuries on or after the first day of July, one thousand nine hundred ninety-eight. To this end, the performance council is directed to reenact the rules promulgated under the prior enactment of this section within fifteen days of the effective date hereof and the commissioner shall promulgate any revisions to the rules for review by the performance council on or before the first day of July, one thousand nine hundred ninety-nine.

§23-4-10. Classification of death benefits; “dependent” defined.

In case a personal injury, other than occupational pneumoconiosis or other occupational disease, suffered by an employee in the course of and resulting from his or her employment, causes death, and disability is continuous from date of such injury until date of death, or if death results from occupational pneumoconiosis or from any other occupational disease, the benefits shall be in the amounts and to the persons as follows:

(a) If there be no dependents, the disbursements shall be limited to the expense provided for in sections three and four of this article.

(b) If there be dependents as defined in subdivision (d) of this section, such dependents shall be paid for as long as their
dependency shall continue in the same amount as was paid or
would have been paid the deceased employee for total disability
had he or she lived. The order of preference of payment and
length of dependence shall be as follows:

(1) A dependent widow or widower until death or remar-
riage of such widow or widower, and any child or children
dependent upon the decedent until each such child shall reach
eighteen years of age or where such child after reaching
eighteen years of age continues as a full-time student in an
accredited high school, college, university, business or trade
school, until such child reaches the age of twenty-five years or
if an invalid child to continue as long as such child remains an
invalid. All such persons shall be jointly entitled to the amount
of benefits payable as a result of employee’s death.

(2) A wholly dependent father or mother until death.

(3) Any other wholly dependent person for a period of six
years after the death of the deceased employee.

(c) If the deceased employee leaves no wholly dependent
person, but there are partially dependent persons at the time of
death, the payment shall be fifty dollars a month, to continue
for such portion of the period of six years after the death, as the
division may determine, but no such partially dependent person
shall receive compensation payments as a result of the death of
more than one employee.

Compensation under subdivisions (b) and (c) hereof shall,
except as may be specifically provided to the contrary therein,
cease upon the death of the dependent, and the right thereto
shall not vest in his or her estate.

(d) "Dependent", as used in this chapter, shall mean a
widow, widower, child under eighteen years of age, or under
twenty-five years of age when a full-time student as provided
herein, invalid child or posthumous child, who, at the time of
the injury causing death, is dependent, in whole or part, for his
or her support upon the earnings of the employee, stepchild
under eighteen years of age, or under twenty-five years of age
when a full-time student as provided herein, child under
eighteen years of age legally adopted prior to the injury causing
death, or under twenty-five years of age when a full-time
student as provided herein, father, mother, grandfather or
grandmother, who at the time of the injury causing death, is
dependent, in whole or in part, for his or her support upon the
earnings of the employee; and invalid brother or sister wholly
dependent for his or her support upon the earnings of the
employee at the time of the injury causing death.

(e) If a person receiving permanent total disability benefits
dies from a cause other than a disabling injury leaving any
dependents as defined in subdivision (d) of this section, an
award shall be made to such dependents in an amount equal to
one hundred four times the weekly benefit the worker was
receiving at the time of his or her death and be paid either as a
lump sum or in periodic payments, at the option of the depend-
ent or dependents. Direct premium rating experience charges
for the payment of such benefits granted as a result of a second
injury award of permanent total disability shall not be made to
the employee’s employer. It is the intent of the Legislature that
the amendments to this subsection enacted during the regular
session of the Legislature in the year one thousand nine hundred
ninety-nine be construed so as to make dependents eligible for
benefits under this subsection retroactive to the second day of
February, one thousand nine hundred ninety-five.

ARTICLE 5. REVIEW.

§23-5-9. Hearings on objections to division decisions by office of judges.


With the exception of medical benefits, the claimant, the
employer and the workers' compensation division, may
negotiate a final settlement of any and all issues in a claim
wherever the claim may then be in the review or appellate
processes. Upon entering into an agreement, the parties shall
file the written and executed agreement with the office of
judges. The office of judges shall review the proposed agree-
ment to determine if it is fair and reasonable to the parties and
shall ensure that each of the parties are fully aware of the
effects of the agreement including what each party is conceding
in exchange for the agreement. If the office of judges concludes
that the agreement is not fair or is not reasonable or that one of
the parties is not fully informed, then the agreement will not be
approved, which decision shall not be reviewable. If the
employer is not active in the claim, then the division may
negotiate a final settlement of any and all issues in a claim
except for medical benefits with the claimant. Upon approval
of the settlement, it shall be made a part of the claim record and
the office of judges shall send written notice of the settlement
to all parties and, where appropriate, to the appeal board or the
supreme court of appeals. Except in cases of fraud, no issue that
is the subject of an approved settlement agreement may be
reopened by any party, including the division. Any settlement
agreement may provide for a lump sum payment or a structured
payment plan, or any combination thereof, or such other basis
as the parties may agree. If such self-insured employer later
fails to make the agreed upon payment, the division shall
assume the obligation to make the payments and shall be
entitled to recover the amounts paid or to be paid from the self-
insured employer and its sureties or guarantors or both as
provided for in sections five and five-a, article two of this
chapter.

The amendments to this section enacted during the regular
session of the Legislature in the year one thousand nine hundred
ninety-nine shall apply to all settlement agreements executed
after such effective date.

§23-5-9. Hearings on objections to division decisions by office of
judges.

(a) Objections to a workers’ compensation division decision
made pursuant to the provisions of section one of this article
shall be filed with the office of judges. Upon receipt of an
objection, the office of judges shall notify the division and all
other parties of the filing of the objection. The office of judges
shall establish by rule promulgated in accordance with the
provisions of subsection (e), section eight of this article an
adjudicatory process that enables parties to present evidence in
support of their positions and provides an expeditious resolution
of the objection. The employer, the claimant and the division shall be notified of any hearing at least ten days in advance.

(b) The office of judges shall keep full and complete records of all proceedings concerning a disputed claim. Subject to the rules of practice and procedure promulgated pursuant to section eight of this article, the record upon which the matter shall be decided shall include any evidence submitted by a party to the office of judges, evidence taken at hearings conducted by the office of judges and any documents in the division's claim files which relate to the matter objected to. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure referred to herein. The office of judges shall not be bound by the usual common law or statutory rules of evidence.

(c) All hearings shall be conducted as determined by the chief administrative law judge pursuant to the rules of practice and procedure promulgated pursuant to section eight of this article. Upon consideration of the entire record, the chief administrative law judge or other authorized adjudicator within the office of judges shall render a decision affirming, reversing or modifying the division's action. Said decision shall contain findings of fact and conclusions of law and shall be mailed to all parties.

(d) The rule authorized by subsection (a) of this section shall be promulgated on or before the first day of July, one thousand nine hundred ninety-nine. Until the rule is finally promulgated, the prior provisions of this section as found in chapter two hundred fifty-three of the acts of the Legislature, one thousand nine hundred ninety-five, shall remain in effect.

ARTICLE 6. SEVERABILITY; LEGISLATIVE INTENT; OPERATIVE DATE.

§23-6-2. Legislative intent.
§23-6-3. Operative date for particular enactment.

§23-6-2. Legislative intent.

1 It is the intent of the Legislature in enacting the amendments to this chapter during the regular session of the Legisla-
ture in the year one thousand nine hundred ninety-nine relating
to employee benefits that the compensation programs perfor-
mance council consider employer rate reductions commensurate
with the cost of such employee benefits.

§23-6-3. Operative date for particular enactment.

The amendments to this chapter effected by the enactment
during the regular session of the Legislature, one thousand nine
hundred ninety-nine, become operative on the first day of July,
one thousand nine hundred ninety-nine.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24e. Omission to subscribe to the workers’ compensation fund; failure to file
a premium tax report or pay premium taxes; false testimony or state-
ments; failure to file reports; penalties; asset forfeiture; venue.

§61-3-24f. Wrongfully seeking workers’ compensation; false testimony or state-
ments; penalties; venue.

§61-3-24g. Workers’ compensation health care offenses; fraud; theft or embezzle-
ment; false statements; penalties; notice; prohibition against provid-
ing future services; penalties; asset forfeiture; venue.

§61-3-24h. Providing false documentation to workers’ compensation; altering
documents or certificates from workers’ compensation; penalties;
venue.

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

(1) Failure to subscribe:

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

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

(2) Failure to pay:

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

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

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

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

(3) Failure to file premium tax reports:

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

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

(4) Failure to file other reports:

(A) Any person, individually or as owner, partner, president or other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association who, as a responsible person as defined in section twenty-four-e of this article, knowingly and willfully fails to file any report, other than a premium tax report, required by such chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be
confined in jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to file any report, other than a premium tax report, with the workers' compensation fund as required by chapter twenty-three of this code, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed two thousand five hundred dollars.

(5) False testimony or statements:

Any person, individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association who, as a responsible person as defined in section twenty-four-e of this article, knowingly and willfully makes a false report or statement under oath, affidavit, certification or by any other means respecting any information required to be provided under chapter twenty-three of this code shall be guilty of a felony and, upon conviction thereof, shall be confined in the penitentiary for a definite term of imprisonment which is not less than one year nor more than three years or fined not less than one thousand dollars nor more than ten thousand dollars, or both, in the discretion of the court.

(6) Asset forfeiture:

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

(B) For purposes of paragraph (6) (A), the term "payment of the costs of asset forfeiture" means:

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of
property under seizure, detention, forfeiture or of any other
necessary expenses incident to the seizure, detention, forfeiture,
or disposal of such property, including payment for:

(a) Contract services;

(b) The employment of outside contractors to operate and
manage properties or provide other specialized services
necessary to dispose of such properties in an effort to maximize
the return from such properties; and

(c) Reimbursement of any state or local agency for any
expenditures made to perform the functions described in this
subparagraph;

(ii) The compromise and payment of valid liens and
mortgages against property that has been forfeited, subject to
the discretion of the workers' compensation fund to determine
the validity of any such lien or mortgage and the amount of
payment to be made, and the employment of attorneys and
other personnel skilled in state real estate law as necessary;

(iii) Payment authorized in connection with remission or
mitigation procedures relating to property forfeited; and

(iv) The payment of state and local property taxes on
forfeited real property that accrued between the date of the
violation giving rise to the forfeiture and the date of the
forfeiture order.

(7) Venue:

Venue for prosecution of any violation of this section shall
be either the county in which the defendant's principal business
operations are located or in Kanawha County where the
workers' compensation fund is located.

§61-3-24f. Wrongfully seeking workers' compensation; false
testimony or statements; penalties; venue.

(1) Any person who shall knowingly and with fraudulent
intent secure or attempt to secure compensation from the
workers' compensation fund or from a self-insured employer:
(A) That is larger in amount than that to which he or she is entitled; or

(B) That is longer in term than that to which he or she is entitled; or

(C) To which he or she is not entitled, shall be guilty of a larceny and, if the amount is one thousand dollars or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than two thousand five hundred dollars. If the amount is less than one thousand dollars, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

(2) Any person who shall knowingly and willfully make a false report or statement under oath, affidavit, certification or by any other means respecting any information required to be provided under chapter twenty-three of this code shall be guilty of a felony and, upon conviction thereof, shall be confined in the penitentiary for a definite term of imprisonment which is not less than one year nor more than three years or fined not less than one thousand dollars nor more than ten thousand dollars, or both, in the discretion of the court.

(3) In addition to any other penalty imposed, the court shall order any person convicted under this section to make full restitution of all moneys paid by the workers' compensation fund or self-insured employer as the result of a violation of this section.

(4) If the person so convicted is receiving compensation from such fund or employer, he or she shall, from and after such conviction, cease to receive such compensation as a result of that alleged injury or disease.

(5) Venue for prosecution of any violation of this section shall either be the county in which the claimant resides, the
county in which the claimant is employed or working, or in Kanawha County where the workers' compensation fund is located.

§61-3-24g. Workers' compensation health care offenses; fraud; theft or embezzlement; false statements; penalties; notice; prohibition against providing future services; penalties; asset forfeiture; venue.

(1) Any person who knowingly and willfully executes, or attempts to execute, a scheme or artifice:

(A) To defraud the workers' compensation fund or a self-insured employer in connection with the delivery of or payment for workers' compensation health care benefits, items or services; or

(B) To obtain, by means of false or fraudulent pretenses, representations, or promises any of the money or property owned by or under the custody or control of the workers' compensation fund or a self-insured employer in connection with the delivery of or payment for workers' compensation health care benefits, items or services; or

(C) To make any charge or charges against any injured employee or any other person, firm or corporation which would result in a total charge for the treatment or service rendered in excess of the maximum amount set forth therefore in the workers' compensation division's schedule of maximum reasonable amounts to be paid for such treatment or services issued pursuant to subsection (a), section three, article four, chapter twenty-three of this code shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than two thousand five hundred dollars.

(2) Any person who, in any matter involving a health care program related to the workers' compensation fund, knowingly and willfully:

(A) Falsifies, conceals or covers up by any trick, scheme, or device a material fact; or
(B) Makes any materially false, fictitious or fraudulent
statement or representation, or makes or uses any materially
false writing or document knowing the same to contain any
materially false, fictitious, or fraudulent statement or entry,
shall be guilty of a felony and, upon conviction thereof, shall be
confined in the penitentiary for a definite term of imprisonment
which is not less than one year nor more than three years or
fined not less than one thousand dollars nor more than ten
thousand dollars, or both, in the discretion of the court.

(3) Any person who willfully embezzles, steals or otherwise
unlawfully converts to the use of any person other than the
rightful owner, or intentionally misapplies any of the moneys,
funds, securities, premiums, credits, property or other assets of
a health care program related to the workers' compensation
fund, shall be guilty of a felony and, upon conviction thereof,
shall be imprisoned in the penitentiary for not less than one nor
more than ten years or fined not less than ten thousand dollars,
or both, in the discretion of the court.

(4) Any health care provider who fails, in violation of
subsection (5) of this section to post a notice, in the form
required by the workers' compensation division, in the pro-
vider's public waiting area that the provider cannot accept any
patient whose treatment or other services or supplies would
ordinarily be paid for from the workers' compensation fund or
by a self-insured employer unless such patient consents, in
writing, prior to the provision of such treatment or other
services or supplies, to make payment for that treatment or
other services or supplies himself or herself, shall be guilty of
a misdemeanor and, upon conviction thereof, shall be fined one
thousand dollars.

(5) Any person convicted under the provisions of this
section shall, from and after such conviction, be barred from
providing future services or supplies to injured employees for
the purposes of workers' compensation and shall cease to
receive payment for such services or supplies.

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

(B) For purposes of paragraph (6) (A), the term “payment of the costs of asset forfeiture” means:

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of property under seizure, detention or forfeiture, or of any other necessary expenses incident to the seizure, detention, forfeiture or disposal of such property, including payment for:

(a) Contract services;

(b) The employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

(c) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph;

(ii) The compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the workers’ compensation fund to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in state real estate law as necessary;

(iii) Payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

(iv) The payment of state and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

(7) Venue for prosecution of any violation of this subsection shall be either the county in which the defendant’s principal business operations are located or in Kanawha County where the workers’ compensation fund is located.
§61-3-24h. Providing false documentation to workers' compensation; altering documents or certificates from workers' compensation; penalties; venue.

(1) Any person, firm, partnership, company, corporation association or medical provider who submits false documentation to workers' compensation with the intent to defraud workers' compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

(2) Any person, firm, partnership, company, corporation, association or medical provider who alters, falsifies, defaces, changes or modifies any certificate or other document which would indicate good standing with workers' compensation or endorsement by workers' compensation for medical services shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

(3) Venue for prosecution of any violation of this section shall be either the county in which the claimant resides, a defendant's principal business operations are located, or in Kanawha County where the workers' compensation fund is located.

CHAPTER 295

(Com. Sub. for S. B. 351 — By Senators Hunter, Prezioso, Oliverio, Mitchell and Ball)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article five-a, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section four, relating to state employees continuing to accrue increment pay while off work because of a work-related injury; and legislative rules.

Be it enacted by the Legislature of West Virginia:

That article five-a, chapter twenty-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 four, to read as follows:

ARTICLE 5A. DISCRIMINATORY PRACTICES.

§23-5A-4. State employees to accrue increment pay during absence due to work-related injuries; legislative rules.

1 (a) All employees of the state of West Virginia shall continue to accrue increment pay during absences from work due to a work-related compensable injury.

4 (b) The director of the division of personnel shall propose rules for legislative approval to implement the provisions of this section.

CHAPTER 296

(Com. Sub. for H. B. 2742 — By Mr. Speaker, Mr. Kiss, and Delegates Douglas, Mezzatesta, Michael, Doyle, Varner and Martin)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]
BERKELEY COUNTY ROUNDHOUSE AUTHORITY.

§1. Regional roundhouse authority authorized.
§2. Authority to be a public corporation.
§3. Authority empowered and authorized to acquire, operate, etc., roundhouse property.
§4. Management of authority vested in board; appointment and terms of members; vote of members, valuation of property contributed to the authority.
§5. Substitution of members.
§6. Qualification of members.
§7. Compensation of members.
§9. Rules and regulations to control vehicular and pedestrian traffic; violation of rule and regulations a misdemeanor; penalty.
§10. Indebtedness of authority.
§11. Agreements in connection with obtaining funds.
§12. Authority to have right of eminent domain.
§13. Property, bonds and obligations of authority exempt from taxation.
§14. Authority may lease facilities.
§15. Disposition of surplus of authority.
§16. Contributions to authority; funds and accounts of authority.
§17. Dissolution of authority; disposition of assets after payment of debts.
§18. Employees to be covered by workers' compensation.
§19. Liberal construction of act.

§1. Regional roundhouse authority authorized.

The county commissions of interested counties and governing bodies of the municipalities within the region of Berkeley County are hereby authorized to create and establish the Berkeley County roundhouse authority for the purpose of acquiring, establishing, constructing, equipping, improving, financing, maintaining and operating the historic Baltimore and Ohio Railroad roundhouse property located in the city of Martinsburg, for various uses: Provided, That no municipality or county may participate in the authority unless and until its governing body provides.

§2. Authority to be a public corporation.

The Berkeley County roundhouse authority when created and established, and the members thereof, shall constitute a public corporation and as such, shall have perpetual succession, may contract and be contracted with, sue and be sued, and have and use a common seal.
§3. Authority empowered and authorized to acquire, operate, etc., roundhouse property.

The authority is hereby empowered and authorized to acquire, establish, construct, equip, improve, finance, maintain and operate for purposes it considers appropriate, the Baltimore and Ohio Railroad roundhouse located in the city of Martinsburg with appurtenant facilities and any other property necessary for the purposes of the authority.

§4. Management of authority vested in board; appointment and terms of members; vote of members, valuation of property contributed to the authority.

The management and control of the authority, its property, operations, business and affairs shall be lodged in a board of not less than five nor more than twenty-one individuals who shall be known as members of the authority board and who shall be appointed for terms of three years. Each participating county and municipality may initially appoint three members. Thereafter, the authority may vary representation on the authority board depending on the number of municipalities and counties that choose to participate and to contribute moneys or property to the authority, except that the county shall retain the right to appointment of a majority of members of the board. Each member shall serve at the will and pleasure of his or her appointing body.

When property is contributed, the contributing municipality or county and the authority shall agree in writing at the time the contribution is made as to the fair market value of such property.

§5. Substitution of members.

If any member of the authority board dies, resigns, is removed or for any other reason ceases to be a member of the authority, the municipality or the county commission which the member represented shall appoint another individual to fill the unexpired portion of the term of the member.

§6. Qualification of members.
Each member of the authority board shall be a resident of the municipality or county that appointed the member.

§7. Compensation of members.

No member of the authority board shall receive any compensation, whether in the form of salary, per diem allowance or otherwise, for or in connection with his or her services as a member. Each member shall be entitled to reimbursement by the authority for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a member.


The authority shall have the following powers:

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

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

(3) To enter into contracts with any person, including both public and private corporations, or governmental department or agency, and generally to do any and all things necessary or convenient for the purpose of acquiring, establishing, constructing, equipping, improving, financing, maintaining and operating the roundhouse property with appurtenant facilities and other property necessary for the purposes of the authority;

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

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

(6) To acquire lands and hold title thereto in its own name;
(7) To purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real property which it may own;

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

(9) To raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of sections nine through seventeen, article sixteen, chapter eight of the West Virginia code, it being hereby expressly provided that for the purpose of the issuance and sale of revenue bonds, the authority is a "governing body" as that term is used in said article only;

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

(11) To expend its funds in the execution for the powers herein given;

(12) To apply for, receive and use loans, grants, donations, technical assistance and contributions from participating municipalities and counties; and

(13) To prescribe by bylaw the manner of financial participation by participating municipalities and counties.

§9. Rules and regulations to control vehicular and pedestrian traffic; violation of rule and regulations a misdemeanor; penalty.

(a) The county commission of Berkeley County is hereby empowered and authorized, upon request of the authority, to adopt and promulgate rules to: (1) Control the movement and disposition of vehicular and pedestrian traffic within the property of the authority; (2) regulate and control vehicular
parking within the property by the installation of parking meters
or by other methods; and (3) impose reasonable charges for the
use of the parking space so metered or otherwise allocated, so
as to provide maximum opportunity for the public use thereof.

(b) Violation of any rule adopted pursuant to subsection (a)
of this section shall constitute a misdemeanor and the offender,
upon conviction in the manner provided by law, may be fined
not less than two dollars nor more than ten dollars for each
violation. Magistrates shall have concurrent jurisdiction with
statutory courts of record having criminal jurisdiction for the
trial of offenses under this section.

§10. Indebtedness of authority.

The authority may incur any proper indebtedness, issue any
obligations and give any security therefor that it may consider
necessary and advisable in connection with carrying out its
purposes.

No indebtedness or obligation incurred by the authority
shall give any right against any member of the governing body
of any participating municipality or county or any member of
the authority board. No indebtedness of any nature of the
authority shall constitute an indebtedness of the governing body
of any participating municipality or county or be a charge
against any property of any participating municipality or
county. The rights of creditors of the authority shall be solely
against the authority as a corporate body and shall be satisfied
only out of property held by it in its corporate capacity.

§11. Agreements in connection with obtaining funds.

The authority may, in connection with obtaining moneys or
property for its purposes, enter into any agreement with any
person, including the federal government, or any department,
agency or subdivision thereof, containing such provisions,
covenants, terms and conditions as the authority may consider
advisable.

§12. Authority to have right of eminent domain.
Whenever it shall be considered necessary by the authority, in connection with the exercise of its powers herein conferred, to take or acquire any lands, structures or buildings or other rights, either in fee or as easements, for the purposes herein set forth, the authority may purchase the same directly or through its agents from the owner or owners thereof, or failing to agree with the owner or owners thereof, the authority may exercise the power of eminent domain in the manner provided for condemnation proceedings in chapter fifty-four of the West Virginia code, and such purposes are hereby declared to be public uses for which private property may be taken or damaged.

§13. Property, bonds and obligations of authority exempt from taxation.

The authority shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof or any municipality or to any officer or employee of the state or of any subdivision thereof or of any municipality.

The property of the authority shall be exempt from all municipal and county taxes. Bonds, notes, debentures and other evidences of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, shall be exempt from taxation.

§14. Authority may lease facilities.

The authority may lease all or part of the property and all or any part of the appurtenances and facilities therewith to any available lessee, subject to all constitutional and statutory limitations with respect thereto, at such rental and upon such terms and conditions as the authority shall consider proper.

§15. Disposition of surplus of authority.

If the authority should realize a surplus, whether from operating the property or leasing it for operation, over and above the amount required for the equipping, improvement, maintenance and operation of the property and for meeting all
required payments on its obligations, it shall set aside such
reserve for future equipping, improvements, maintenance,
operations and contingencies as it shall consider proper and
shall then apply the residue of the surplus, if any, to the
payment of any recognized and established obligations not then
due, and after all such recognized and established obligations
have been paid off and discharged in full, the authority shall, at
the end of each fiscal year, set aside the reserve for future
equipping, improvements, maintenance, operations and
contingencies, as aforesaid, and then pay the residue of such
surplus, if any, to the participating counties and municipalities
in direct proportion to their contribution for moneys and
property.

§16. Contributions to authority; funds and accounts of authority.

Contributions of moneys may be made to the authority from
time to time by the participating municipalities and counties
and persons that shall desire to do so. All such moneys and all
other moneys received by the authority shall be deposited in a
banking institution or banking institutions as the authority may
direct and shall be withdrawn therefrom in a manner as the
authority may direct. The authority shall keep strict account of
all of its receipts and expenditures and shall make an annual
report thereon to the participating municipalities and counties
contributing moneys or property, and the report shall contain an
itemized account of its receipts and disbursements for the
preceding fiscal year, and publish the same as a Class II-O legal
advertisement in compliance with the provision of article three,
chapter fifty-nine of the code of West Virginia, in a newspaper
of general circulation within Berkeley County. The books,
records and accounts of the authority shall be subject to audit
and examination by the office of the state tax commissioner and
by any other proper public official or body in the manner
provided by law.

The participating counties and municipalities are hereby
authorized to convey to the authority any and all real and
personal property to which they hold title and which property
will enhance the authority’s ability to own, manage and operate
the aforesaid B&O Railroad roundhouse property with appurte-
nant facilities and other property necessary to the purposes of the authority.

§17. Dissolution of authority; disposition of assets after payment of debts.

In the event full and adequate provision is made for the payment of all of the debts of the authority, the participating municipalities or counties or any combination thereof which have contributed at least sixty percent of the total value of all moneys and property (the value of which property is determined as specified in section four of this article) contributed to the authority by the participating municipalities and counties may by resolution provide for the dissolution of the authority and for: (1) The conveyance of the real and tangible personal property contributed to it to the participating municipalities and counties that contributed the same; (2) equitable distribution among the contributing municipalities and counties of any real and tangible personal property purchased or condemned by the authority or of the proceeds of sale thereof, or the fair value thereof; and (3) the equitable distribution of all moneys on hand to the participating municipalities and counties in direct proportion to the contribution of moneys by them.

§18. Employees to be covered by workers' compensation.

All eligible employees of the authority shall be considered to be within the workers' compensation system of this state and premiums on their compensation shall be paid by the authority as required by law.

§19. Liberal construction of act.

The purposes of this act are to provide for the acquisition, establishment, construction, equipping, improvements, financing, maintenance and operation of the roundhouse property in a prudent and economical manner, and this act shall be liberally construed as giving to the authority created and established hereunder full and complete power reasonably required to give effect to the purposes hereof. The provisions of this act are in addition to and not in derogation of any power granted to or
vested in municipalities and county commissions under any constitutional, statutory or charter provisions which may now or hereafter be in effect.

CHAPTER 297

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to authorize Central West Virginia Chapter 418 of the Purple Heart Society to erect memorials to certain purple heart medal recipients at the Meadowbrook rest areas on Interstate 79 in Harrison County; and requiring commissioner of highways approval.

Be it enacted by the Legislature of West Virginia:

CENTRAL WEST VIRGINIA CHAPTER, PURPLE HEART SOCIETY.

§1. Memorial to certain purple heart medal recipients authorized at Meadowbrook rest areas on Interstate 79 in Harrison County; and requiring division of highways approval.

The Central West Virginia Chapter 418 of the Purple Heart Society is authorized to erect at the northbound and southbound Meadowbrook rest areas on Interstate 79 near mile post one hundred twenty-three in Harrison County and at the northbound and southbound rest areas near mile post eighty-three in Lewis County, suitable memorials to persons from Barbour, Braxton, Doddridge, Gilmer, Harrison, Lewis, Randolph, Ritchie and Upshur counties and part of Marion County, who have received purple heart medals. The society shall provide funding and construction of the memorials in accordance with a plan approved by the commissioner of highways. The commissioner of the division of highways shall approve the location, design and construction of the memorials.
CHAPTER 298

(S. B. 673 — By Senators Sprouse, McKenzie, Mitchell and Minear)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT authorizing the state building commission to sell the land, together with the improvements thereon, known as the Morris Square building in Charleston, Kanawha County.

Be it enacted by the Legislature of West Virginia:

SALE OF PROPERTY.

§1. Land sale; description.

(a) The executive director of the state building commission is authorized to solicit interest in, enter into a contract for sale, and to sell and convey, for good and valuable consideration as negotiated by the executive director of the state building commission, all of those certain lots or parcels of land, together with the improvements thereon, the privileges thereof, and the appurtenances thereunto belonging, known as Lot "A-1", containing 1.118 Acres, more or less, and Lot "A-2", containing 0.507 Acres, more or less, situate in the city of Charleston, Charleston East Tax District, Kanawha County, West Virginia, being the same property being more accurately bounded and described in a deed dated the 29th day of October, 1996, from Charleston Building Corporation, to the State Building Commission of West Virginia, duly of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, in Deed Book No. 2399, at Page No. 79; subject, however, to all restrictions, reservations, rights-of-way, easements, utilities, covenants, restrictions, leases, exclusions and other matters duly of record affecting the subject property. Reference to the deed is here made for a more particular description of the property, and for all pertinent purposes. The money from the sale of the property shall be deposited in the state general revenue fund.
(b) The executive director may engage the services of a duly licensed real estate broker to sell the property, for a commission not to exceed seven percent of the sale price, to be paid from the proceeds of sale at the time of the closing of the sale.

(c) Prior to the listing of the property with a real estate broker and to the sale of the property, the executive director shall have the property appraised by two independent licensed commercial real estate appraisers. The property may not be sold for less than the average of the fair market values of the property as determined by the appraisals.

(d) All or any part of the funds realized from the sale may be used for intermodal facilities within the state of West Virginia.

CHAPTER 299

(S. B. 673 — By Delegates Flanigan, Frederick, Kominar, H. White, Perdue, Yeager and Wright)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish the King Coal Highway (I73/74) Authority; functions; members; appointment; powers and duties; officers; bylaws; rules; compensation; authority as corporate body; support, maintenance and operation; and severability.

Be it enacted by the Legislature of West Virginia:

KING COAL HIGHWAY AUTHORITY.

§1. Highway authority created; functions.
§2. Members; appointment; powers and duties generally; officers; bylaws; rules; compensation.
§3. Body corporate.
§4. Support, maintenance and operation.
§5. Severability.

§1. Highway authority created; functions.
There is hereby created a King Coal Highway (173/74) Authority, to promote and advance the construction of a modern highway through McDowell, Mercer, Mingo, Wyoming and Wayne counties along currently existing state route fifty-two and to coordinate with counties, municipalities, state and federal agencies, public nonprofit corporations, private corporations, associations, partnerships and individuals for the purpose of planning, assisting and establishing recreational, tourism, industrial, economic and community development of the King Coal Highway (173/74) for the benefit of West Virginians.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules; compensation.

(a) The authority consists of fifteen voting members and three ex officio nonvoting members. All members shall be appointed before the first day of July, two thousand one. No more than ten members of the authority may be from the same political party.

(b) Each of the county commissions of the counties of McDowell, Mercer, Mingo, Wyoming and Wayne shall appoint three voting members to the commission. The terms of the voting members initially appointed by a county commission are as follows: One member from each county shall be appointed for a term of one year and two members from each county shall be appointed for a term of two years. All successive appointments shall be for a term of four years. Any voting member may be removed for cause by the appointing county commission.

(c) The three ex officio nonvoting members are the commissioner of highways or his or her designee, the director of natural resources or his or her designee and the executive director of the West Virginia development office or his or her designee. All terms of ex officio nonvoting members are for four years.

(d) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof. All members are eligible for reappointment.
§1. Highway authority created; functions.

There is hereby created a King Coal Highway (173/74) Authority, to promote and advance the construction of a modern highway through McDowell, Mercer, Mingo, Wyoming and Wayne counties along currently existing state route fifty-two and to coordinate with counties, municipalities, state and federal agencies, public nonprofit corporations, private corporations, associations, partnerships and individuals for the purpose of planning, assisting and establishing recreational, tourism, industrial, economic and community development of the King Coal Highway (173/74) for the benefit of West Virginians.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules; compensation.

(a) The authority consists of fifteen voting members and three ex officio nonvoting members. All members shall be appointed before the first day of July, two thousand one. No more than ten members of the authority may be from the same political party.

(b) Each of the county commissions of the counties of McDowell, Mercer, Mingo, Wyoming and Wayne shall appoint three voting members to the commission. The terms of the voting members initially appointed by a county commission are as follows: One member from each county shall be appointed for a term of one year and two members from each county shall be appointed for a term of two years. All successive appointments shall be for a term of four years. Any voting member may be removed for cause by the appointing county commission.

(c) The three ex officio nonvoting members are the commissioner of highways or his or her designee, the director of natural resources or his or her designee and the executive director of the West Virginia development office or his or her designee. All terms of ex officio nonvoting members are for four years.

(d) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof. All
§3. Sued, plead and be impleaded and may have and use a corporate seal.

§4. Support, maintenance and operation.

1 The county commissions of the counties of McDowell, Mercer, Mingo, Wyoming and Wayne may provide for the support, maintenance and operation of the King Coal Highway (I73/74) Authority and other related activities under the jurisdiction of the authority hereby created.

§5. Severability.

1 If any provision hereof is held invalid, such invalidity shall not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this article are declared to be severable.

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CHAPTER 300

(H. B. 2691 — By Delegates Flanigan, Willis and Frederick)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four and six, chapter two hundred twenty-eight, acts of the Legislature, regular session, one thousand nine hundred ninety-seven; and to further amend said chapter by adding thereto a new section, designated section seven, all relating to the Mercer County Governmental Council; expanding its authority; and changing its composition.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four and six, chapter two hundred twenty-eight, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, be amended and reenacted; and that said chapter be further amended by adding thereto a new section, designated section seven, all to read as follows:
MERCER COUNTY GOVERNMENTAL COUNCIL.

§2. Purposes.
§3. Membership.
§4. Officers.

§2. Purposes.

The purposes of the council are to:

(1) Foster and promote cooperation and understanding among the various governing bodies and officials of Mercer County, West Virginia, including the Mercer County legislative delegation. A desired effect is for Mercer County to present a unified voice and vision to the state and federal governments for the betterment of Mercer County and to ensure that the citizens of Mercer County are heard by their state and federal representatives and receive a fair and equitable proportion of resources available from these levels of government; and

(2) Develop strategies and plans for supporting solutions to problems and meeting needs of the county.

§3. Membership.

(a) The Mercer County Governmental Council is composed of full members and associate members.

(b) The full members are the elected members of the governing bodies of the municipalities located within Mercer County, the members of the Mercer County Commission, and those members of the state Senate and the House of Delegates elected to represent Mercer County, or a portion thereof, in the Legislature. The terms of office for these members are coextensive with the terms of their respective elected offices.

(c) The associate members are:

(1) Those individuals elected to the following Mercer County public offices: Sheriff, county clerk, circuit clerk, assessor and prosecuting attorney. The terms of office of these
members are coextensive with the terms of their respective elected offices; and

(2) Those individuals who are elected or appointed to the following offices or positions: Mercer County Economic Development Authority; Bluefield city manager; Princeton city manager; Region I Planning and Development Council; West Virginia Division of Highways district office; Chambers of Commerce; Mercer County Board of Education; Mercer County Health Board; Bluestone Convention and Tourism Board; Mercer County Emergency Services; hospital administrators of hospitals located in Mercer County and others who may be appointed from time to time, at the council's discretion. The terms of office of these members shall be coextensive with the terms of their elected or appointed offices or positions.

§4. Officers.

The Mercer County Governmental Council shall, at its meeting in July, one thousand nine hundred ninety-nine, elect from among its membership a president, vice president, treasurer and secretary, who serve in their respective capacities for terms of two years.


The council as a whole may take up for consideration any matter brought before it by any member but only full members of the council are entitled to vote on a matter. A simple majority of the full members present voting in the affirmative is sufficient for the measure to carry. However, no vote of the council may have a binding effect upon any member in the performance of his or her duties as an elected or appointed official. The votes of the council are advisory only, except when authorizing the expenditure of funds.


(a) The council is authorized to receive appropriations, gifts and grants from any source, including, but not limited to, any municipality within the county and the county commission. It may establish an account with a local bank for deposit of funds
County public offices: Sheriff, county clerk, circuit clerk, assessor and prosecuting attorney. The terms of office of these members are coextensive with the terms of their respective elected offices; and

(2) Those individuals who are elected or appointed to the following offices or positions: Mercer County Economic Development Authority; Bluefield city manager; Princeton city manager; Region I Planning and Development Council; West Virginia Division of Highways district office; Chambers of Commerce; Mercer County Board of Education; Mercer County Health Board; Bluestone Convention and Tourism Board; Mercer County Emergency Services; hospital administrators of hospitals located in Mercer County and others who may be appointed from time to time, at the council's discretion. The terms of office of these members shall be coextensive with the terms of their elected or appointed offices or positions.

§4. Officers.

The Mercer County Governmental Council shall, at its meeting in July, one thousand nine hundred ninety-nine, elect from among its membership a president, vice president, treasurer and secretary, who serve in their respective capacities for terms of two years.


The council as a whole may take up for consideration any matter brought before it by any member but only full members of the council are entitled to vote on a matter. A simple majority of the full members present voting in the affirmative is sufficient for the measure to carry. However, no vote of the council may have a binding effect upon any member in the performance of his or her duties as an elected or appointed official. The votes of the council are advisory only, except when authorizing the expenditure of funds.


(a) The council is authorized to receive appropriations, gifts and grants from any source, including, but not limited to, any
Proposing an amendment to the Constitution of the State of West Virginia, amending article eight thereof by adding thereto a new section, designated section sixteen, relating to authorizing the Legislature to establish a family court of original jurisdiction; authorizing the Legislature to determine the jurisdiction of family courts; providing for the election of family court judges; setting forth the required qualifications to serve as a family court judge; permitting the Legislature to determine the number of family court judges and family court circuits; permitting the Legislature to determine the arrangement of family court circuits; permitting the Legislature to establish staggered terms of office; providing that the supreme court of appeals will have general supervisory control over family courts; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment of the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year two thousand or in any special election prior thereto, which proposed amendment is that article eight thereof be amended by adding thereto a new section, designated section sixteen, to read as follows:

ARTICLE VIII. THE JUDICIARY.

§16. Family Courts.
There is hereby created under the general supervisory control of the supreme court of appeals a unified family court system in the State of West Virginia to rule on family law and related matters. Family courts shall have original jurisdiction in the areas of family law and related matters as may hereafter be established by law. Family courts may also have such further jurisdiction as established by law.

Family court judges shall be elected by the voters for a term prescribed by law not to exceed eight years, unless sooner removed or retired as authorized in this article. Family court judges must be admitted to practice law in this state for at least five years prior to their election. Family court judges shall reside in the circuit for which he or she is a judge.

The necessary number of family court judges, the number of family court circuits and the arrangement of circuits shall be established by law. Staggered terms of office for family court judges may also be established by law.

The supreme court of appeals shall have general supervisory control over all family courts and may provide for the assignment of a family court judge to another court for temporary service. The provisions of sections seven and eight of this article applicable to circuit judges shall also apply to family court judges.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered “Amendment No. 1” and designated as the “Unified Family Court Amendment” and the purpose of the proposed amendment is summarized as follows: “To amend the Constitution of West Virginia to permit the Legislature to establish a unified system of family courts with jurisdiction over family law and child welfare matters.”
LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1999

CHAPTER 1

(H. B. 102 — By Delegate Michael)

[Passed March 22, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the bureau of commerce, West Virginia development office, fund 0256, fiscal year 1999, organization 0307, as originally appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the “Budget Bill”.

Be it enacted by the Legislature of West Virginia:

1 That the items of the total appropriations from the state fund, general revenue, to the bureau of commerce, West Virginia development office, fund 0256, fiscal year 1999,
organization 0307, be amended and reduced in the existing line items as follows:

**TITLE II—APPROPRIATIONS.**

**Sec. 1. Appropriations from general revenue.**

**BUREAU OF COMMERCE**

77—*West Virginia Development Office—*

(WV Code Chapter 5B)

Fund 0256 FY 1999 Org 0307

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Local Economic Development</td>
</tr>
<tr>
<td>8</td>
<td>Partnerships (R)</td>
</tr>
<tr>
<td>29</td>
<td>WV Partnership for Industrial Modernization (R)</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state fund, general revenue, to the bureau of commerce, West Virginia development office, fund 0256, fiscal year 1999, organization 0307, be amended and increased in a new line item as follows:

**TITLE II—APPROPRIATIONS.**

**Sec. 1. Appropriations from general revenue.**

**BUREAU OF COMMERCE**

77—*West Virginia Development Office—*

(WV Code Chapter 5B)

Fund 0256 FY 1999 Org 0307

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>35a</td>
<td>Office of Coalfield Community</td>
</tr>
<tr>
<td>35b</td>
<td>Development (R)</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Office of Coalfield Community Development (fund 0256, activity 326) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit. The item for local economic development partnerships (R) (activity 133) is reduced by seventy-five thousand dollars. The item for partnerships for industrial modernization (R) (activity 592) is reduced by one hundred twenty-five thousand dollars. The item for office of coalfield community development (activity 326) is increased by one hundred twenty-five thousand dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 2

(H. B. 104 — By Delegate Michael)

[Passed March 22, 1999; in effect July 1, 1999. 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 — office of secretary, fund 0294, fiscal year 2000, organization 0431, and to the department of health and human resources—division of human services, fund 0403, fiscal year 2000, organization 0511, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor, by executive message dated the twenty-second day of March, one thousand nine hundred ninety-nine, has
increased the revenue estimates for the fiscal year ending the thirtieth
day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the
2 thirtieth day of June, two thousand, to fund 0294, fiscal year
3 2000, organization 0431, be supplemented and amended by
4 increasing the total appropriation by one million dollars in a
5 new line item as follows:

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

41—Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2000 Org 0431

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue Fund</th>
</tr>
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<tbody>
<tr>
<td>General</td>
<td></td>
</tr>
<tr>
<td>14a Community and Technical College</td>
<td>858 $1,000,000</td>
</tr>
<tr>
<td>14b Pupil Support Adjustment</td>
<td></td>
</tr>
</tbody>
</table>

And, that the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand, to fund 0403, fiscal year
2000, organization 0511, be supplemented and amended by
increasing the total appropriation by three million dollars in an
existing line item as follows:

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

56—Division of Human Services—

(WV Code Chapters 9, 48 and 49)
The purpose of this bill is to supplement the department of education and the arts — office of secretary, fund 0294, fiscal year 2000, organization 0431, in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by adding one million dollars to the existing appropriation in a new line item for community and technical college pupil support adjustment, and to supplement the department of health and human resources—division of human services, fund 0403, fiscal year 2000, organization 0511, in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by adding three million dollars to the existing appropriation in an existing line item for West Virginia childrens health fund-transfer, all for expenditure during the fiscal year two thousand.

CHAPTER 3

(H. B. 103 — By Delegate Michael)

[Passed March 22, 1999; in effect from passage. Approved by the Governor.]
day of June, one thousand nine hundred ninety-nine, to the governor’s office—civil contingent fund, fund 0105, fiscal year 1999, organization 0100; to the department of education and the arts—office of the secretary, fund 0294, fiscal year 1999, organization 0431; to the department of military affairs and public safety—office of the secretary, fund 0430, fiscal year 1999, organization 0601; and to the department of military affairs and public safety—office of emergency services, fund 0443, fiscal year 1999, organization 0606; all for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The Legislature finds that the account balance in the abandoned property claims trust, fund 1324, fiscal year 1999, organization 1300, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, It thus appearing from the provisions of this legislation that 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-nine; therefore

Be it enacted by the Legislature of West Virginia:

1. That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, in the abandoned property claims trust, fund 1324, fiscal year 1999, organization 1300, be decreased by expiring the amount of one million two hundred sixty-six thousand dollars to the unappropriated surplus balance in the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0105, organization 0100, be supplemented and amended by increasing the total appropriation by seven hundred thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE
### Title II—Appropriations

#### Section 1. Appropriations from General Revenue.

**Department of Education and the Arts**

**Office of the Secretary**

(WV Code Chapter 5F)

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>34-15a</td>
<td>Underwood Youth Center (R)</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for the civil contingent fund—Total (fund 0105, activity 114) at the close of fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0294, organization 0431, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:
Any unexpended balance remaining in the appropriation for Underwood youth center (fund 0294, activity 341) at the close of fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0430, organization 0601, be supplemented and amended by increasing the total appropriation by sixteen thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

Department of Military Affairs and Public Safety—
Office of the Secretary
(WV Code Chapter 5F)

Fund 0430 FY 1999 Org 0601

<table>
<thead>
<tr>
<th>General</th>
<th>Act-</th>
<th>Revenue</th>
<th>Activity</th>
<th>Fund</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>$16,000</td>
<td></td>
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Any unexpended balance remaining in the appropriation for the Bland memorial fund (fund 0430, activity 332) at the close of fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0443, organization 0606, be supplemented and amended by increasing the total appropriation by fifty thousand dollars as follows:

TITLE II—APPROPRIATIONS.
Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

59—Office of Emergency Services—
(WV Code Chapter 15)

Fund 0443 FY 1999 Org 0606

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
</tr>
<tr>
<td>099</td>
<td>$50,000</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for unclassified (fund 0443, activity 099) at the close of fiscal 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

The purpose of this bill is to expire the sum of one million, two hundred sixty-six thousand dollars from the abandoned property claims trust, fund 1324, fiscal year 1999, organization 1300, and to supplement the governor's office—civil contingent fund, fund 0105, fiscal year 1999, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by adding seven hundred thousand dollars to an existing item of appropriation; department of education and the arts—office of the secretary, fund 0294, fiscal year 1999, organization 0431, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by adding five hundred thousand dollars to a new item of appropriation for the Underwood youth center; to supplement the department of military affairs and public safety—office of the secretary, fund 0430, fiscal year 1999, organization 0601, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by adding sixteen thousand dollars to a new item of appropriation for the Bland memorial fund; and to supplement the department of military affairs and public safety—office of emergency services, fund 0443, fiscal year
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-nine, in the lottery net profits, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established that there now remains an unappropriated balance in the lottery net profits available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; therefore

Be it enacted by the Legislature of West Virginia:

That chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the "Budget Bill", be supplemented and amended by adding a new item of appropriations to Title II, section nine thereof as follows:

TITLE II—APPROPRIATIONS.

Section 9. Appropriations from lottery net profits.

213-Department of Education and the Arts

Office of the Secretary
Any unexpended balance remaining in the appropriation for Shepherd College—Capital Improvements—Total (fund 3507, activity 764) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

The purpose of this supplementary appropriation bill is to supplement this account in the budget bill for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by providing for a new item of appropriation to be established therein to appropriate seven hundred thousand dollars to the department of education and the arts-office of the secretary, control account, fund 3507, fiscal year 1999, organization 0431, to be expended during the fiscal year one thousand nine hundred ninety-nine.

CHAPTER 5

(S. B. 1002 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 22, 1999; in effect from passage. Approved by the Governor.]

AN ACT to repeal article ten, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article one of said chapter; to amend and reenact sections thirteen, thirteen-e and fourteen,
article five of said chapter; to amend and reenact section six-a, article five-a of said chapter; to amend and reenact section four, article five-b of said chapter; to amend and reenact sections one, three, five and six, article five-e of said chapter; to further amend said article by adding thereto two new sections, designated sections five-a and eight; and to amend and reenact sections one and twenty-nine, article seven of said chapter, all relating to the state’s system of child welfare and juvenile justice; stating purpose; defining certain responsibilities and duties of state agencies and courts; providing for proposal of a joint plan to the designated legislative task force for juvenile oversight by the department of health and human resources and the division of juvenile services regarding a coordinated system of child welfare and juvenile justice and requiring regular reports as to its progress before completion; clarifying provisions relating to juvenile proceedings; requiring certain plans be reported annually; requiring the development of criteria for determining the construction, renovation, expansion or replacement of regional detention facilities; requiring regular reports and annual updates of the plan to the designated legislative oversight committee; authorizing director of the division of juvenile services to seek modification of dispositional order; mandating certain cooperative arrangements or agreements between the division and the department; eliminating obsolete language regarding the Ohio County jail; specifying requirements relating to the medical and other care or treatment of juveniles committed to the division’s custody; setting forth arrest authority of juvenile correctional officers; setting forth priority of hiring with regard to juvenile detention and corrections facilities; providing for confidentiality of records; directing the development of certain uniform court orders; and repealing article establishing child placement alternatives corporation.

Be it enacted by the Legislature of West Virginia:

That article ten, 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 sections thirteen, thirteen-e and fourteen, article five of said chapter be amended and reenacted; that section six-a, article five-a of said
chapter be amended and reenacted; that section four, article five-b of said chapter be amended and reenacted; that sections one, three, five and six, article five-e of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections five-a and eight; and that sections one and twenty-nine, article seven of said chapter be amended and reenacted, all to read as follows:

Article
1. Purposes; Definitions.
5A. Juvenile Referee System.
5B. West Virginia Juvenile Offender Rehabilitation Act.
5E. Division of Juvenile Services.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

(a) The purpose of this chapter is to provide a coordinated system of child welfare and juvenile justice for the children of this state that has goals to:

(1) Assure each child care, safety 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 of status offenders and juvenile delinquents;

(10) Provide a system for the secure detention of certain juveniles alleged or adjudicated delinquent;

(11) Provide a system for the secure incarceration of juveniles adjudicated delinquent and committed to the custody of the director of the division of juvenile services; and

(12) Protect the welfare of the general public.

(b) In pursuit of these goals it is the intention of the Legislature to provide for removing the child from the custody of his or her 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. It is further the intention of the Legislature to require that any reunification, permanency or preplacement preventative services address the safety of the child.

(c) The child welfare service of the state shall be administered by the department of health and human resources. The division of juvenile services of the department of military affairs and public safety shall administer the secure predispositional juvenile detention and juvenile correctional facilities of the state. Notwithstanding any other provision of this code to the contrary, the administrative authority of the division of juvenile services over any child in this state extends only to those detained or committed to a secure detention facility or secure correctional facility operated and maintained by the division by an order of a court of competent jurisdiction during the period of actual detention or confinement in the facility.
(d) The 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.

(e) The department of health and human resources and the division of juvenile services shall present a joint plan for a coordinated system of child welfare and juvenile justice, including specific provisions for juveniles who have been accused of an act of delinquency through the filing of a formal petition pursuant to section seven, article five of this chapter, to the designated legislative task force for juvenile oversight on or before the first day of September, one thousand nine hundred ninety-nine. The department and division shall report regularly during the interim period to the designated task force before completion of the plan to advise the Legislature as to progress of the plan’s development.

ARTICLE 5. JUVENILE PROCEEDINGS.


§49-5-13e. Comprehensive plan for juveniles.


(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 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 or a child welfare agency. The court order shall state that continuation in the home is contrary 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 department, 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 the custody of the director of the division of juvenile services for placement in a juvenile correctional 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 and any such maximum allowable sentence to be served in a juvenile correctional facility may take into account any time served by the juvenile in a detention center pending adjudication, disposition or transfer. 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;

(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 of the mental health facility may release a juvenile and return him or her 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, the court shall inquire whether the juvenile wishes to appeal and the response shall be 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.

§49-5-13e. Comprehensive plan for juveniles.

(a) The division of juvenile services shall develop and annually update a comprehensive plan to establish a unified state system for social and rehabilitative programming and treatment of juveniles who are detained or incarcerated in predispositional detention centers and in juvenile correction facilities and a comprehensive plan for regional juvenile detention facilities and programs. These plans and updates are to be submitted to the West Virginia Legislature no later than the first day of January each year.

(b) The comprehensive plan for regional detention programs and facilities shall be based on the need for secure juvenile detention services in a given county or region. The secretary of the department of health and human resources, the secretary of the department of military affairs and public safety and the executive director of the regional jail and correctional facility authority shall develop and agree to the criteria to be considered in determining the construction, renovation, acquisition or repair of projects proposed after the effective date of this article. These criteria are to be reviewed periodically and included in the annual report required pursuant to this section. The comprehensive plan may propose locating newly constructed detention facilities on or near a planned or existing

(a) A dispositional order of the court may be modified:

(1) Upon the motion of the probation officer, a department official, the director of the division of juvenile services or prosecuting attorney; or

(2) Upon the request of the child or a child’s parent or custodian who alleges a change of circumstances relating to disposition of the child.

(b) Upon such a motion or request, the court shall conduct a review proceeding, except that if the last dispositional order was within the previous six months the court may deny a request for review. Notice in writing of a review proceeding shall be given to the child, the child’s parent or custodian and all counsel not less than seventy-two hours prior to the proceeding. The court shall review the performance of the child, the child’s parent or custodian, the child’s social worker and other persons providing assistance to the child or child’s family. If the motion or request for review of disposition is based upon an alleged violation of a court order, the court may modify the dispositional order to a more restrictive alternative if it finds clear and convincing proof of substantial violation. In the absence of such proof, the court may decline to modify the dispositional order or may modify the order to one of the less restrictive alternatives set forth in section thirteen of this article. No juvenile may be required to seek a modification order as provided in this section in order to exercise his or her right to seek release by habeas corpus.

(c) In a hearing for modification of a dispositional order, or in any other dispositional hearing, the court shall consider the best interests of the child and the welfare of the public.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§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 be predicated upon the maximum utilization of existing resources, facilities and procedures and shall take into consideration recommendations from the department of health and human resources, the regional jail and correctional facility authority, the division of corrections, the governor’s committee on crime, delinquency and correction, the supreme court of appeals, 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 first for the effective and efficient use of existing regional juvenile detention facilities and the prudent allocation of resources for any future expansion or addition.

(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 president of the Senate and the speaker of the House of Delegates shall designate a committee or task force thereof, to act in a continuing capacity as an oversight committee, which shall assist the director of the division of juvenile services in the development, periodic review and update of the state plan for the predispositional detention centers for juveniles. To this end, the director shall make regular reports to the designated legislative oversight body during the interim period and immediately before any regular session of the Legislature, which reports shall include any recommendations for legislative enactment, together with drafts of any proposed legislation necessary to effectuate those recommendations.

ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION 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 jointly 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 child welfare and 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 or her 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 affected by the juvenile justice system;

(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 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; and

(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 are authorized and directed to enter into cooperative arrangements and agreements with each other and with private agencies or with agencies of the state and its political subdivisions to fulfill their respective duties under this article and chapter.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-1. Policy.

§49-5E-3. Transfer of functions; duties and powers; employment of comprehensive strategy.

§49-5E-5. Rules for specialized training for juvenile corrections officers and detention center employees.

§49-5E-5a. Juvenile detention and corrections facilities; employees; priority of hiring.

§49-5E-6. Medical and other treatment of juveniles in custody of the division; coordination of care and claims processing and administration by the department; authorization of certain cooperative agreements.

§49-5E-8. Arrest authority of juvenile correctional and detention officers.

§49-5E-1. Policy.

It is the policy of the state to provide a coordinated continuum of care for its children who have been charged with an
offense which would be a crime if committed by an adult, whether they are taken into custody and securely detained or released pending adjudication by the court. It is further the policy of the state to ensure the safe and efficient custody of a securely detained child through the entire juvenile justice process, and this can best be accomplished by the state by providing for cooperation and coordination between the agencies of government which are charged with responsibilities for the children of the state. Accordingly, whenever any juvenile is ordered by the court to be transferred from the custody of one of these agencies into the custody of the other, the department of health and human resources and the division of juvenile services shall cooperate with each other to the maximum extent necessary in order to ease the child’s transition and to reduce unnecessary cost, duplication and delay.

§49-5E-3. Transfer of functions; duties and powers; employment of comprehensive strategy.

The division of juvenile services shall assume the following duties previously 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 secure 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 secure 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 securely 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 regional predispositional detention centers for juveniles, as set forth in section thirteen-e, article five and 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 have been adjudicated 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-5. Rules for specialized training for juvenile corrections officers and detention center employees.
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.

§49-5E-5a. Juvenile detention and corrections facilities; employees; priority of hiring.

(a) Notwithstanding any provision of this code to the contrary, the division, when employing any persons to complete the approved staffing plan of any of its juvenile detention or corrections facilities shall employ any person otherwise qualified who applies for a position at the juvenile detention or corrections facility who was also employed in good standing at a county or local jail facility, at the time of its closing, that was closed due to the completion of a regional jail.

(b) All persons employed at a juvenile detention or corrections facility shall be employed at a salary and with benefits consistent with the approved plan of compensation of the division of personnel, created under section five, article six, chapter twenty-nine of this code; all such employees shall also be covered by the policies and procedures of the education and state employees grievance board, created under section five, article six-a, chapter twenty-nine of this code and the classified-exempt service protection policies of the division of personnel.

§49-5E-6. Medical and other treatment of juveniles in custody of the division; coordination of care and claims processing and administration by the department; authorization of certain cooperative agreements.

(a) Notwithstanding any other provision of law to the contrary, the director, or his or her designee, is hereby authorized to consent to the medical or other treatment of any juvenile in the legal or physical custody of the director or the division.
(b) In providing or arranging for the necessary medical and other care and treatment of juveniles committed to the division’s custody, the director shall utilize service providers who provide the same or similar services to juveniles under existing contracts with the department of health and human resources. In order to obtain the most advantageous reimbursement rates, to capitalize on an economy of scale and to avoid duplicative systems and procedures, the department shall administer and process all claims for medical or other treatment of juveniles committed to the division’s custody.

(c) For purposes of implementing the mandates of this section, the director is hereby authorized and directed to enter into any necessary agreements with the department of health and human resources. Any such agreement shall specify, at a minimum, for the direct and incidental costs associated with such care and treatment to be paid by the division of juvenile services.

§49-5E-8. Arrest authority of juvenile correctional and detention officers.

(a) Persons employed by the division of juvenile services as juvenile correctional officers or detention officers are authorized and empowered to arrest persons already in the custody of the division of juvenile services for violations of law that occur in the officer’s presence, including escape.

(b) Nothing in this section shall be construed as to make a juvenile correctional or detention officer employed by the division of juvenile services a law-enforcement officer as defined in section one, article twenty-nine, chapter thirty of this code.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

§49-7-29. General provisions to read uniform court orders regarding custody; promulgation of rules.

§49-7-1. Confidentiality of records.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or
juvenile which are maintained by the division of juvenile
services, the department of health and human resources, a child
agency or facility, 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 disclosing the identity of a
person making a complaint of child abuse or neglect shall be
made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been termi-
nated; or

(C) 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) In addition to those persons or entities to whom infor-
mation may be disclosed under subsection (b) of this section,
information related to child abuse or neglect proceedings,
except information relating to the identity of the person
reporting or making a complaint of child abuse or neglect, shall
be made available, upon request, to:

(1) Federal, state or local government entities, or any agent
of such entities, including law-enforcement agencies and
prosecuting attorneys, having a need for such information in
order to carry out its responsibilities under law to protect
children from abuse and neglect;

(2) The child fatality review team;
(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court or family law master, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court or family law master.

(d) In the event of a child fatality or near fatality due to child abuse and neglect, information relating to such fatality or near fatality shall be made public by the department of health and human resources and to the entities described in subsection (c) of this section, all under the circumstances described in that subsection: Provided, That information released by the department of health and human resources pursuant to this subsection shall not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, "near fatality" means any medical condition of the child which is certified by the attending physician to be life-threatening.

(e) 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.

(f) 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.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and
identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public.

§49-7-29. General provisions to read uniform court orders regarding custody; promulgation of rules.

1 The supreme court shall, in consultation with the department of health and human resources and the division of juvenile services, develop and cause to be implemented, as soon as practicable but no later than the first day of September, one thousand nine hundred ninety-nine, forms for court orders which are consistent with the provision of chapter forty-nine of this code, including provisions for authorizing disclosure and transfer of juvenile records between agencies while requiring maintenance of confidentiality, as well as the provisions of Title 142 U.S.C. Section 620, et seq., and Title 42 U.S.C. Section 670, et seq., relating to the promulgation of uniform court orders for placement of minor children and the regulations promulgated thereunder, for use in the magistrate and circuit courts of the state.

CHAPTER 6

(H. B. 106 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed March 22, 1999; in effect from passage. Approved by the Governor.]
from sanctions under certain circumstances; and providing for
disposition of fines, money penalties and fees.

Be it enacted by the Legislature of West Virginia:

That article twenty, chapter forty-seven of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be
amended by adding thereto a new section, designated section thirty-
one; and that article twenty-one of said chapter be amended by adding
thereto a new section, designated section thirty, all to read as follows:

Article

ARTICLE 20. CHARITABLE BINGO.

§47-20-31. Additional remedies for the commissioner; adminis-
trative procedures; deposit of money penalties.

(a) Additional remedies. — Notwithstanding any provision
of this article to the contrary, the commissioner may:

(1) Revoke or refuse to renew any license issued under this
article for any material violation of the provisions of this article
or legislative rules of the commissioner promulgated for this
article;

(2) Suspend the license of any licensee for the period of
time the commissioner deems appropriate, not to be less than
one week nor more than twelve months, for any material
violation of the provisions of this article or legislative rule of
the commissioner promulgated for this article;

(3) Place a licensee on probation for not less than six
months nor more than five years: Provided, That in the event a
licensee is placed on probation, as a condition of the probation,
the licensee shall pay to the commissioner a probation supervi-
sion fee in an amount equal to two percent of the gross proceeds
derived by the licensee from the conduct of bingo occasions
during the period of the suspension, but, in no event, may the
probation supervision fee be less than two thousand dollars. All
probation supervision fee revenue shall be placed in a special
account and used by the commissioner, after appropriation by
the Legislature, to offset the expenses and costs incurred by the
tax division to supervise the licensee;

(4) Require a licensee to replace any officer who knew or
should have known of a material violation of the provisions of
this article or legislative rules of the commissioner promulgated
for this article;

(5) Require a licensee to prohibit one or more members,
supporters, volunteers or employees of the licensee involved in
acts of material violation of the provisions of this article or
legislative rules of the commissioner promulgated for this
article, from all future bingo occasions held under the license,
or for the period of time specified by the commissioner;

(6) Impose a civil money penalty in an amount not less than
one hundred dollars nor more than two times the annual gross
proceeds derived by the licensee, for each material violation of
the provisions of this article or legislative rules of the commis-
sioner: Provided, That in setting any monetary penalty for a
first offense, the commissioner shall take into consideration the
ability of the licensee to continue to exist and operate. For each
material violation which is a second or subsequent offense, the
amount of the civil penalty that may be imposed may not be
less than five hundred dollars and may not exceed two times the
annual gross proceeds of the licensee. Application of this
subdivision and the amount of civil money penalty levied shall
be determined in accordance with a legislative rule promulgated
by the commissioner pursuant to article three, chapter
twenty-nine-a of this code. The commissioner may file this rule
as an emergency rule. Any licensee aggrieved by the amount of
the civil penalty may surrender its license, or, after exhausting
all administrative remedies, have the matter reviewed in the
circuit court of the county where the offense giving rise to the
civil penalty occurred; or

(7) Order any one or more, or any combination, of the
penalties provided for in subdivisions (1) through (6) of this
subsection: Provided, That no sanctions or other remedy shall
be imposed under this article on a licensee which is exempt or
qualified to be exempt from federal income taxation under
subsection 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended, but does not have bona fide members, due to failure to operate bingo occasions with members if the occasions are or were operated by residents of this state who have been employed by the licensee or been meaningfully associated with the licensee for one or more years before the date of the licensee's application for a license under this article, or its last application for renewal of a license under this article.

(b) Administrative procedures.

(1) An order issued under this section shall be served by certified mail or in the manner provided in rule 4(d) of the West Virginia rules of civil procedure for trial courts of record, as amended.

(2) A licensee may appeal an order of the commissioner issued under this section by filing a written protest with the commissioner, either in person or by certified mail, within twenty days after the licensee is served with a copy of the order.

(3) When a written protest is filed timely, the provisions of article five, chapter twenty-nine-a of this code shall apply. The commissioner may by procedural rule specify the form and content of a written protest.

(4) The burden of proof in any administrative or court proceeding is on the licensee to show cause why the order of the commissioner under this section should be modified, in whole or in part, or set aside.

(c) Deposit of money penalties. —All fines, money penalties and fees imposed pursuant to this section, except the probation supervision fee imposed by subdivision (3), subsection (a) of this section, shall be deposited into the general revenue fund of this state.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-30. Additional remedies for the commissioner; administrative procedures; deposit of money penalties.

(a) Additional remedies. —Notwithstanding any provision of this article to the contrary, the commissioner may:
(1) Revoke or refuse to renew any license issued under this article for any material violation of the provisions of this article or legislative rules of the commissioner promulgated for this article;

(2) Suspend the license of any licensee for the period of time the commissioner deems appropriate, not to be less than one week nor more than twelve months, for any material violation of the provisions of this article or legislative rule of the commissioner promulgated for this article;

(3) Place a licensee on probation for not less than six months nor more than five years: Provided, That in the event a licensee is placed on probation, as a condition of the probation, the licensee shall pay to the commissioner a probation supervision fee in an amount equal to two percent of the gross proceeds derived by the licensee from the conduct of raffle occasions during the period of the suspension, but, in no event, may the probation supervision fee be less than two thousand dollars. All probation supervision fee revenue shall be placed in a special account and used by the commissioner, after appropriation by the Legislature, to offset the expenses and costs incurred by the tax division to supervise the licensee;

(4) Require a licensee to replace any officer who knew or should have known of a material violation of the provisions of this article or legislative rules of the commissioner promulgated for this article;

(5) Require a licensee to prohibit one or more members, supporters, volunteers or employees of the licensee involved in acts of material violation of the provisions of this article or legislative rules of the commissioner promulgated for this article, from all future raffle occasions held under the license, or for the period of time specified by the commissioner;

(6) Impose a civil money penalty in an amount not less than one hundred dollars nor more than two times the annual gross proceeds derived by the licensee, for each material violation of the provisions of this article or legislative rules of the commissioner: Provided, That in setting any monetary penalty for a first offense, the commissioner shall take into consideration the
ability of the licensee to continue to exist and operate. For each material violation which is a second or subsequent offense, the amount of the civil penalty that may be imposed may not be less than five hundred dollars and may not exceed two times the annual gross proceeds of the licensee. Application of this subdivision and the amount of civil money penalty levied shall be determined in accordance with a legislative rule promulgated by the commissioner pursuant to article three, chapter twenty-nine-a of this code. The commissioner may file this rule as an emergency rule. Any licensee aggrieved by the amount of the civil penalty may surrender its license, or, after exhausting all administrative remedies, have the matter reviewed in the circuit court of the county where the offense giving rise to the civil penalty occurred; or

(7) Order any one or more, or any combination, of the penalties provided for in subdivisions (1) through (6) of this subsection: Provided, That no sanctions or other remedy shall be imposed under this article on a licensee which is exempt or qualified to be exempt from federal income taxation under subsection 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended, but does not have bona fide members, due to failure to operate raffle occasions with members if the occasions are or were operated by residents of this state who have been employed by the licensee or been meaningfully associated with the licensee for one or more years before the date of the licensee’s application for a license under this article, or its last application for renewal of a license under this article.

(b) Administrative procedures.

(1) An order issued under this section shall be served by certified mail or in the manner provided in rule 4(d) of the West Virginia rules of civil procedure for trial courts of record, as amended.

(2) A licensee may appeal an order of the commissioner issued under this section by filing a written protest with the commissioner, either in person or by certified mail, within twenty days after the licensee is served with a copy of the order.
(3) When a written protest is filed timely, the provisions of article five, chapter twenty-nine-a of this code shall apply. The commissioner may by procedural rule specify the form and content of a written protest.

(4) The burden of proof in any administrative or court proceeding is on the licensee to show cause why the order of the commissioner under this section should be modified, in whole or in part, or set aside.

(c) Deposit of money penalties. — All fines, money penalties and fees imposed pursuant to this section, except the probation supervision fee imposed by subdivision (3), subsection (a) of this section, shall be deposited into the general revenue fund of this state.

CHAPTER 7

(S. B. 1000 — By Senators Tomblin, Mr. President, and Senator Sprouse)

[By Request of the Executive]

[Passed March 22, 1999; to take effect July 1, 1999. Approved by the Governor.]  

AN ACT to amend and reenact section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to tax credits available for investment in qualified West Virginia capital companies generally; reducing the total tax credits allowed for the fiscal year beginning the first day of July, one thousand nine hundred ninety-nine; and allocating a portion of the allowed credits during the first ninety days of each fiscal year to investment in certain small business investment companies.

Be it enacted by the Legislature of West Virginia:

That section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

(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)(1) 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 million five hundred thousand dollars: Provided, however, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-eight, the total credits authorized for all companies may not exceed a total of six million dollars: Provided further, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-nine, the total credits authorized for all companies may not exceed a total of six million dollars: And provided further, 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.

(2) Beginning on the first day of July, one thousand nine hundred ninety-nine, not more than one million seven hundred fifty thousand dollars of the credits allowed under subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more small business investment companies described in this subdivision. The remainder of the tax credits allowed during the fiscal year shall be allocated to qualified companies other than those small business investment companies. The portion of the tax credits allowed for small business investment companies described in this subdivision shall be allowed only if allocated by the authority during the first ninety days of the fiscal year, and may only be allocated to companies that: (A) Were organized on or after the first day of January, one thousand nine hundred ninety-nine; (B) have
registered for licensure by the small business administration as 
a small business investment company under the small business 
investment act; and (C) have certified in writing to the authority 
on the application for credits under this act that the company 
will diligently seek to obtain and thereafter diligently seek to 
invest leverage available to such small business investment 
companies under the small business investment act. These 
credits shall be allocated by the authority in the order that the 
companies are qualified. Any credits which have not been 
allocated to qualified companies meeting the requirements of 
this subdivision relating to small business investment compa-

nies during the first ninety days of the fiscal year shall be made 
available and allocated to other qualified companies in the 
manner prescribed in this section for qualified companies 
generally.

(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.

CHAPTER 8

(H. B. 105 — By Mr. Speaker, Mr. Kiss, and Delegates Martin, Varner, Michael, Pino, Douglas and Doyle)

[Passed March 22, 1999; in effect ninety days from passage. Approved by the Governor.]
of said code; to amend and reenact section ten-a, article one, chapter fifty-one of said code; and to amend and reenact section thirteen, article two of said chapter, all relating to salary adjustments for certain public officials.

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

That section three, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two and two-a, article seven, chapter six of said code be amended and reenacted; that section one, article three, chapter eighteen of said code be amended and reenacted; that section three, article four, chapter forty-eight-a of said code be amended and reenacted; that section three, article one, chapter fifty of said code be amended and reenacted; that section ten-a, article one, chapter fifty-one of said code be amended and reenacted; and that section thirteen, article two of said chapter be amended and reenacted, all to read as follows:

Chapter

5F. Reorganization of the Executive Branch of State Government.


18. Education.

48A. Enforcement of Family Obligations.

50. Magistrate Courts.

51. Courts and Their Officers.

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

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-3. Oath; bond; compensation.

1 (a) Each person appointed to serve as a secretary shall take the oath or affirmation prescribed by section five, article four of the constitution, and such oath shall be certified by the person who administers the same and filed in the office of the secretary of state.

6 (b) Each person so appointed shall give bond in the penalty of twenty-five thousand dollars conditioned for the faithful
8 performance of the duties of the office, which bond shall be
9 approved by the attorney general as to form and by the governor
10 as to sufficiency. The surety of such bond may be a bonding or
11 surety company, in which case the premium shall be paid out of
12 the appropriation made for the administration of the depart-
13 ment.

14 (c) Each secretary shall receive a salary of seventy thousand
15 dollars per year. Beginning the first day of July, one thousand
16 nine hundred ninety-nine, the secretary of the department of
17 health and human resources shall receive an annual salary of
18 eighty-five thousand dollars.

19 (d) The salary and expenses necessary for each secretary
20 and all expenditures for personal services for the office of
21 secretary shall be paid from and within existing appropriations
22 made to the agencies and boards transferred to the department
23 headed by the secretary, and revised expenditure schedules
24 shall be submitted to the commissioner of finance and adminis-
25 tration and the legislative auditor stating the amount and source
26 of funds to be expended: Provided, That for fiscal years
27 beginning the first day of July, one thousand nine hundred
28 eighty-nine, such amounts shall follow the procedures described
29 in chapter five-a of this code.

CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.
§6-7-2a. Terms of certain appointive state officers; appointment; qualifications;
powers and salaries of such officers.

§6-7-2. Salaries of certain state officers.

1 The salaries for each of the state constitutional officers
2 shall be as follows:

3 (a) The salary of the governor shall be ninety thousand
4 dollars per year;
(b) The salary of the attorney general shall be seventy-five thousand dollars per year;

c) The salary of the auditor shall be seventy thousand dollars per year;

d) The salary of the secretary of state shall be sixty-five thousand dollars per year;

e) The salary of the commissioner of agriculture shall be seventy thousand dollars per year; and

(f) The salary of the state treasurer shall be seventy thousand dollars per year.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the governor, by and with the advice and consent of the Senate. Each of such appointive state officers shall serve at the will and pleasure of the governor for the term for which the governor was elected and until the respective state officers' successors have been appointed and qualified. Each of such appointive state officers shall be subject to the existing qualifications for holding each such respective office and each shall have and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each such office.

Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-nine, the annual salary of each such named appointive state officer shall be as follows:

Administrator, division of highways, eighty-five thousand dollars; administrator, division of health, fifty-seven thousand two hundred dollars; administrator, division of human services, forty-seven thousand eight hundred dollars; administrator, state tax division, sixty-five thousand dollars; administrator, division of energy, sixty-five thousand dollars; administrator, division
of corrections, seventy thousand dollars; administrator, division of natural resources, sixty-five thousand dollars; superintendent, state police, seventy thousand dollars; administrator, lottery division, seventy thousand dollars; director, public employees insurance agency, seventy thousand dollars; administrator, division of banking, fifty-five thousand dollars; administrator, division of insurance, fifty-five thousand dollars; administrator, division of culture and history, fifty thousand dollars; administrator, alcohol beverage control commission, seventy thousand dollars; administrator, division of motor vehicles, seventy thousand dollars; director, division of personnel, fifty thousand dollars; adjutant general, seventy thousand dollars; chairman, health care authority, sixty-five thousand dollars; members, health care authority, sixty thousand dollars; director, human rights commission, forty thousand dollars; administrator, division of labor, fifty-five thousand dollars; administrator, division of veterans affairs, forty thousand dollars; administrator, division of emergency services, forty thousand dollars; members, board of parole, forty thousand dollars; members, employment security review board, seventeen thousand dollars; members, workers' compensation appeal board, seventeen thousand eight hundred dollars.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code, and, prior to the first day of July, one thousand nine hundred ninety-nine, each of the state officers named in this subsection shall continue to receive the annual salaries they were receiving as of the effective date of the enactment of this section in one thousand nine hundred ninety-nine, and shall thereafter, notwithstanding any other provision of this code to the contrary, be paid an annual salary as follows: Administrator, division of risk and insurance management, fifty thousand dollars; director, division of rehabilitation services, fifty-five thousand dollars; executive director, educational broadcasting authority, fifty-five thousand dollars; secretary, library commission, sixty-two thousand five hundred dollars; director, geological and economic survey, forty-seven thousand five hundred dollars; executive director, water development authority, fifty-four thousand dollars.
thousand two hundred dollars; executive director, public
defender services, fifty-five thousand dollars; commissioner,
bureau of senior services, sixty-five thousand dollars; commis-
sioner, oil and gas conservation commission, forty thousand
dollars; director, farm management commission, thirty-two
thousand five hundred dollars; director, state rail authority, fifty
thousand dollars; executive secretary, women’s commission,
thirty thousand one hundred dollars; director, regional jail and
correctional facility authority, seventy thousand dollars;
director, hospital finance authority, twenty-five thousand eight
hundred dollars.

(c) No increase in the salary of any appointive state officer
pursuant to this section shall be paid until and unless such
appointive state officer shall have first filed with the state
auditor and the legislative auditor a sworn statement, on a form
to be prescribed by the attorney general, certifying that his or
her spending unit is in compliance with any general law
providing for a salary increase for his or her employees. The
attorney general shall prepare and distribute such form to the
affected spending units.

CHAPTER 18. EDUCATION.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling
expenses; office and residence.

There shall be appointed by the state board a state superin-
tendent of schools. The superintendent shall be a person of good
moral character, of recognized ability as a school administrator,
holding at least a master’s degree in educational administration,
and shall have had not less than five years of experience in
public school work. The superintendent shall receive an annual
salary of one hundred thousand dollars: Provided, That begin-
ing the first day of July, two thousand, the superintendent shall
receive an annual salary of one hundred ten thousand dollars.
The state superintendent shall also receive necessary traveling
expenses incident to the performance of his or her duties, the
expenses to be paid out of the general school fund upon
warrants of the state auditor. The superintendent shall have his 
or her office at the state capital.

CHAPTER 48A. ENFORCEMENT OF 
FAMILY OBLIGATIONS.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-3. Compensation and expenses of family law masters and 
their staffs.

(a) Prior to the first day of July, one thousand nine hundred 
ninety-four, a family law master shall receive as full compensa-
tion for his or her services an annual salary of thirty-five 
thousand dollars.

(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: Provided, That on 
and after the first day of July, one thousand nine hundred 
ninety-nine, a full-time family law master shall receive as full 
compensation for his or her services an annual salary of fifty-
four thousand dollars and a part-time family law master shall 
receive as full compensation for his or her services an annual 
salary of forty 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.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.


(a) The Legislature finds and declares that:

(1) The West Virginia supreme court of appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate the equal protection clause of the Constitution of the United States;

(2) The West Virginia supreme court of appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate article VI, section 39 of the Constitution of West Virginia;

(3) The utilization of a two-tiered salary schedule for magistrates is an equitable and rational manner by which magistrates should be compensated for work performed;

(4) Organizing the two tiers of the salary schedule into one tier for magistrates serving less than eight thousand five hundred in population and the second tier for magistrates
(5) That all magistrates who fall under the same tier should be compensated equally.

(b) The salary of each magistrate shall be paid by the state. Magistrates who serve less than ten thousand in population shall be paid annual salaries of twenty thousand six hundred twenty-five dollars and magistrates who serve ten thousand or more in population shall be paid annual salaries of twenty-seven thousand dollars: Provided, That on and after the first day of January, one thousand nine hundred ninety-two, magistrates who serve less than ten thousand in population shall be paid annual salaries of twenty-one thousand six hundred twenty-five dollars and magistrates who serve ten thousand or more in population shall be paid annual salaries of twenty-eight thousand dollars: Provided, however, That on and after the first day of January, one thousand nine hundred ninety-three; magistrates who serve less than eight thousand five hundred in population shall be paid annual salaries of twenty-three thousand six hundred twenty-five dollars and magistrates who serve eight thousand five hundred or more in population shall be paid annual salaries of thirty thousand dollars: Provided further, That on and after the first day of January, one thousand nine hundred ninety-seven, magistrates who serve less than eight thousand five hundred in population shall be paid annual salaries of twenty-six thousand six hundred twenty-five dollars and magistrates who serve eight thousand five hundred or more in population shall be paid annual salaries of thirty-three thousand dollars: And provided further, That on and after the first day of July, one thousand nine hundred ninety-nine, magistrates who serve less than eight thousand five hundred in population shall be paid annual salaries of thirty thousand dollars.

(c) For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each
county shall be divided into the population of each county. For the purpose of this article, the population of each county is the population as determined by the last preceding decennial census taken under the authority of the United States government.

CHAPTER 51. COURTS AND THEIR OFFICERS.

Article
1. Supreme Court of Appeals.
2. Circuit Courts; Circuit Judges.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

The salary of each of the justices of the supreme court of appeals shall be seventy-two thousand dollars per year: Provided, That beginning the first day of January, one thousand nine hundred ninety-five, the salary of each of the justices of the supreme court shall be eighty-five thousand dollars per year: Provided, however, That beginning the first day of July, one thousand nine hundred ninety-nine, the salary of each of the justices of the supreme court shall be ninety-five thousand dollars per year.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.


The salaries of the judges of the various circuit courts shall be paid solely out of the state treasury. No county, county commission, board of commissioners or other political subdivision shall supplement or add to such salaries.

The annual salary of all circuit judges shall be sixty-five thousand dollars per year: Provided, That beginning the first day of January, one thousand nine hundred ninety-five, the annual salary of all circuit judges shall be eighty thousand dollars per year: Provided, however, That beginning the first day of July, one thousand nine hundred ninety-nine, the annual salary of all circuit judges shall be ninety thousand dollars per year.
AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing salaries of members of the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.
§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia state police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The superintendent is authorized to propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the purpose of ensuring consis-
(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Members shall receive annual salaries as follows:

<table>
<thead>
<tr>
<th>RANK</th>
<th>ANNUAL SALARY SCHEDULE (BASE PAY)</th>
<th>MONTHLY</th>
<th>YEARLY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$1,747 Mo. $20,964</td>
<td></td>
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<tr>
<td>Cadet Trooper After Training</td>
<td>2,150 Mo. 25,800</td>
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<tr>
<td>Trooper Second Year</td>
<td>26,256</td>
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<tr>
<td>Trooper Third Year</td>
<td>26,628</td>
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<tr>
<td>Trooper Fourth &amp; Fifth Year</td>
<td>26,928</td>
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<tr>
<td>Senior Trooper</td>
<td>29,016</td>
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<tr>
<td>Trooper First Class</td>
<td>31,104</td>
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<tr>
<td>Corporal</td>
<td>33,192</td>
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<tr>
<td>Sergeant</td>
<td>37,368</td>
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<tr>
<td>First Sergeant</td>
<td>39,456</td>
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<td>Second Lieutenant</td>
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<td>First Lieutenant</td>
<td>43,632</td>
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<td>Captain</td>
<td>45,720</td>
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<tr>
<td>Major</td>
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<tr>
<td>Lieutenant Colonel</td>
<td>49,896</td>
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</tbody>
</table>

ANNUAL SALARY SCHEDULE (BASE PAY)

ADMINISTRATION

SUPPORT SPECIALIST CLASSIFICATION
(e) Each member of the West Virginia state police whose salary is fixed and specified pursuant to this section shall receive and is entitled to an increase in salary over that set forth in subsection (d) of this section, for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia state police as follows: At the end of five years of service with the West Virginia state police, the member shall receive a salary increase of three hundred dollars to be effective during his or her next three years of service and a like increase at three-year intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia state police in service at the time
the schedules become effective shall be given credit for prior
service and shall be paid such salaries as the same length of
service entitles them to receive under the provisions of this
section.

(g) The Legislature finds and declares that because of the
unique duties of members of the West Virginia state police, it
is not appropriate to apply the provisions of state wage and hour
laws to them. Accordingly, members of the West Virginia state
police are excluded from the provisions of state wage and hour
law. This express exclusion shall not be construed as any
indication that the members were or were not covered by the
wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have
received under the wage and hour law, and in addition to their
salaries and increases for length of service, members who have
completed basic training and who are exempt from federal Fair
Labor Standards Act guidelines may receive supplemental pay
as provided in this section.

The superintendent shall, within thirty days after the
effective date of this section, propose a legislative rule for
promulgation in accordance with article three, chapter twenty-
ine-a of this code, to establish the number of hours per month
which constitute the standard work month for the members of
the West Virginia state police. The rule shall further establish,
on a graduated hourly basis, the criteria for receipt of a portion
or all of supplemental payment when hours are worked in
excess of the standard work month. The superintendent shall
certify monthly to the West Virginia state police’s payroll
officer the names of those members who have worked in excess
of the standard work month and the amount of their entitlement
to supplemental payment.

The supplemental payment may not exceed two hundred
thirty-six dollars monthly. The superintendent and civilian
employees of the West Virginia state police are not eligible for
any supplemental payments.

(h) Each member of the West Virginia state police, except
the superintendent and civilian employees, shall execute, before
entering upon the discharge of his or her duties, a bond with
security in the sum of five thousand dollars payable to the state
of West Virginia, conditioned upon the faithful performance of
his or her duties, and the bond shall be approved as to form by
the attorney general and as to sufficiency by the governor.

(i) Any member of the West Virginia state police who is
called to perform active duty for training or inactive duty
training in the national guard or any reserve component of the
armed forces of the United States annually shall be granted,
upon request, leave time not to exceed thirty calendar days for
the purpose of performing the active duty for training or
inactive duty training and the time granted may not be deducted
from any leave accumulated as a member of the West Virginia
state police.

(j) Beginning on the first day of July, one thousand nine
hundred ninety-nine, and continuing thereafter, members shall
receive annual salaries as follows:

<p>| AMENDED ANNUAL SALARY SCHEDULE (BASE PAY) |
| SUPERVISORY AND NONSUPERVISORY RANKS |
| Cadet During Training ............... $1,913 Mo. $22,964 |
| Cadet Trooper After Training ...... 2,316 Mo. 27,800 |
| Trooper Second Year ................. 28,256 |
| Trooper Third Year ................. 28,628 |
| Trooper Fourth &amp; Fifth Year ........ 28,928 |
| Senior Trooper ....................... 31,016 |
| Trooper First Class ................. 33,104 |
| Corporal ................................ 35,192 |
| Sergeant .............................. 39,368 |
| First Sergeant ....................... 41,456 |
| Second Lieutenant .................. 43,544 |
| First Lieutenant .................... 45,632 |</p>
<table>
<thead>
<tr>
<th></th>
<th>Captain</th>
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<th>Major</th>
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<th>Lieutenant Colonel</th>
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<td>49,808</td>
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<td>51,896</td>
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**AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)**

**ADMINISTRATION**

**SUPPORT SPECIALIST CLASSIFICATION**

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**AMENDED ANNUAL SALARY SCHEDULE (BASE PAY)**

**CRIMINALIST CLASSIFICATION**

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**IV**

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**V**

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<td>167</td>
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<tr>
<td></td>
<td>43,544</td>
<td></td>
<td>Each member of the West Virginia state police whose</td>
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</tbody>
</table>

salary is fixed and specified in the amended annual salary schedules is entitled to the length of service increases set forth in subsection (f) of this section and supplemental pay as provided in subsection (g) of this section.
AN ACT making a supplementary appropriation in the state fund, general revenue, to the governor's office, fund 0101, fiscal year 2000, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0101, fiscal year 2000, organization 0100, be supplemented and amended to read as follows:

1. TITLE II—APPROPRIATIONS.

2. Section 1. Appropriations from general revenue.
### APPROPRIATIONS

**EXECUTIVE**

5 — *Governor’s Office*

(WV Code Chapter 5)

Fund 0101 FY 2000 Org 0100

<table>
<thead>
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<tr>
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<td>010</td>
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<td>099</td>
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<td>123</td>
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<td>315</td>
<td>11,500</td>
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<tr>
<td>315</td>
<td>11,500</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for unclassified (fund 0101, activity 099) and Publication of Papers and Transition Expenses (fund 0101, activity 465) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by amending language with no new money being appropriated.
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 executive — governor's office — civil contingent fund, fund 0105, fiscal year 1999, organization 0100, in the amount of four million dollars, supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 13, 1999, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1998, and further included the estimate of revenues for fiscal year 1999, less net appropriation balances forwarded and regular appropriations for fiscal year 1999; and

WHEREAS, The governor, by executive message dated the eighteenth day of May, one thousand nine hundred ninety-nine, has increased the revenue estimates for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; and

WHEREAS, It appears from the governor's executive budget document and executive message 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-nine; 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-nine, to the executive
— governor's office — civil contingent fund, fund 0105, fiscal year 1999, organization 0100, be supplemented and amended by increasing the total appropriation by four million dollars as follows:

**TITLE II—APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**EXECUTIVE**

8 — Governor's Office —

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 1999 Org 0100

<table>
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<tr>
<th>Activity</th>
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<tr>
<td>1 Civil Contingent Fund — Total (R)</td>
<td>$ 4,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Civil Contingent Fund — Total (fund 0105, activity 114) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

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-nine, by adding four million dollars to the existing appropriation for expenditure during fiscal year one thousand nine hundred ninety-nine.

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**CHAPTER 3**

(S. B. 2001 — By Senators Tomlin, Mr. President, and Sprouse)

[By Request of the Executive]

[Passed May 20, 1999; 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—library commission, fund 0296, fiscal year 2000, organization 0433, in the amount of eight hundred ninety-one thousand five hundred dollars, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 13, 1999, which included a statement of the state fund, general revenue, setting forth therein the estimate of revenues for the fiscal year ending the thirtieth day of June, two thousand; and

WHEREAS, The governor, by executive message dated the twenty-second day of March, one thousand nine hundred ninety-nine, has increased the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand; and

WHEREAS, It appears from the governor's executive budget document and executive message 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, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to the department of education and the arts—library commission, fund 0296, fiscal year 2000, organization 0433, be supplemented and amended by increasing the total appropriation by eight hundred ninety-one thousand five hundred dollars in a new line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 DEPARTMENT OF EDUCATION AND THE ARTS
4 43—Library Commission
5 (WV Code Chapter 10)
<table>
<thead>
<tr>
<th></th>
<th>Fund 0296 FY 2000 Org 0433</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>9A Capital Outlay - HVAC System</td>
<td>$891,500</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, two thousand, by adding eight hundred ninety-one thousand five hundred dollars in a new line item to the existing appropriation for expenditure during fiscal year two thousand.

CHAPTER 4

(H. B. 203 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed May 19, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the department of health and human resources — division of human services, fund 0403, fiscal year 2000, organization 0511, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0403, fiscal year 2000, organization 0511, be supplemented and amended to read as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES
### Appropriations

#### Division of Human Services

(WV Code Chapters 9, 48 and 49)

- **Fund 0403** FY 2000 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>001 1 Personal Services</td>
<td>$19,692,117</td>
</tr>
<tr>
<td>004 2 Annual Increment</td>
<td>456,261</td>
</tr>
<tr>
<td>010 3 Employee Benefits</td>
<td>7,540,669</td>
</tr>
<tr>
<td>099 4 Unclassified</td>
<td>19,956,786</td>
</tr>
<tr>
<td>144 5 Child Care Development</td>
<td>1,437,213</td>
</tr>
<tr>
<td>183 6 Medical Services Contracts and Office of Managed Care</td>
<td>2,323,020</td>
</tr>
<tr>
<td>189 7 Medical Services</td>
<td>178,587,996</td>
</tr>
<tr>
<td>191 8 Women’s Commission</td>
<td>131,104</td>
</tr>
<tr>
<td>195 9 Social Services</td>
<td>44,040,138</td>
</tr>
<tr>
<td>196 10 Family Preservation Program</td>
<td>1,565,000</td>
</tr>
<tr>
<td>468 11 Child Protective Services Case Workers</td>
<td>7,317,646</td>
</tr>
<tr>
<td>515 12 OSCAR and RAPIDS</td>
<td>3,373,242</td>
</tr>
<tr>
<td>603 13 Child Welfare System</td>
<td>2,500,449</td>
</tr>
<tr>
<td>704 14 Commission for the Deaf and Hard-of-Hearing</td>
<td>157,390</td>
</tr>
<tr>
<td>705 15 Child Support Enforcement</td>
<td>1,698,542</td>
</tr>
<tr>
<td>706 16 Medicaid Auditing</td>
<td>578,372</td>
</tr>
<tr>
<td>707 17 Temporary Assistance for Needy Families/Maintenance of Effort</td>
<td>29,689,373</td>
</tr>
<tr>
<td>708 18 Child Care—Maintenance of Effort and Match</td>
<td>4,409,543</td>
</tr>
</tbody>
</table>
32  23  WV Children's Health Fund—
33  24  Transfer (R)  ................. 714   0
34  25  Grants for Licensed Domestic Violence
35  26  Programs and Statewide Prevention  750  1,000,000
36  27  Indigent Burials (R)  ........... 851  680,000
37  28  Medical Services Trust
38  Fund Transfer  ..................... 452  10,000,000
39  29  James "Tiger" Morton Catastrophic Illness Fund  ........... 455  1,000,000
40      Total  .......................... $338,134,961
41
42  Any unexpended balances remaining in the appropriations for Indigent Burials (fund 0403, activity 851) and West Virginia Children's Health Fund—Transfer (fund 0403, activity 714) at the close of fiscal year 1999 are hereby reappropriated for expenditure during fiscal year 2000.

43  The above appropriation for James "Tiger" Morton Catastrophic Illness Fund (activity 455) shall be transferred to the James "Tiger" Morton Catastrophic Illness Fund (fund 5454) as provided by Chapter 16, Article 5Q, of the Code.

44  Notwithstanding the provisions of Title I, section three 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.

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

46  The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by amending language with no new money being appropriated.
AN ACT supplementing, amending, reducing and increasing items of
the existing appropriations from the state fund, general revenue,
to the department of military affairs and public safety—division
of corrections—correctional units, fund 0450, fiscal year 1999,
organization 0608, as originally appropriated by chapter six, acts
of the Legislature, regular session, one thousand nine hundred
ninety-eight, 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—division of corrections—correctional units, fund 0450, fiscal
year 1999, organization 0608, be amended and reduced in the line
items as follows:

1

TITLE II—APPROPRIATIONS.

2

Section 1. Appropriations from general revenue.

3

DEPARTMENT OF MILITARY AFFAIRS

4

AND PUBLIC SAFETY

5

61—Division of Corrections—

6

Correctional Units

7

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

8

Fund 0450 FY 1999 Org 0608

9
And, that the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety—division of corrections—correctional units, fund 0450, fiscal year 1999, organization 0608, be amended and increased in the line items as follows:

**TITLE II—APPROPRIATIONS.**

Section 1. Appropriations from general revenue.

**DEPARTMENT OF MILITARY AFFAIRS**

**AND PUBLIC SAFETY**

**61—Division of Corrections—**

**Correctional Units**

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

Fund 0450 FY 1999 Org 0608

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit. The line item for personal services (activity 001) is reduced by five hundred thousand dollars. The line item for employee benefits (activity 010) is reduced by three hundred seventy-five thousand dollars. The line item for St. Marys
Correctional Center (activity 839) is reduced by five hundred fifty-five thousand dollars. The line item for the Denmar Facility (activity 448) is increased by two hundred twenty thousand dollars. The line item for Mt. Olive Correctional Complex (activity 533) is increased by one million two hundred ten thousand dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 6

(H. B. 204 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed May 19, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to the department of health and human resources — division of human services — James “Tiger” Morton catastrophic illness fund, fund 5454, fiscal year 2000, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources — division of human services — James “Tiger” Morton catastrophic illness fund, fund 5454, fiscal year 2000, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That chapter seven, acts of the Legislature, regular session, one thousand nine hundred ninety-nine, known as the “Budget Bill”, be
supplemented and amended by adding to title II, section three thereof, the following:

TITLE II—APPROPRIATIONS.
Section 3. Appropriations from other funds.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
141a — Division of Human Services —
James “Tiger” Morton Catastrophic Illness Fund
(WV Code Chapter 16)
Fund 5454 FY 2000 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096 $ 1,250,000</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, two thousand, by providing for a new item of appropriation to be established therein to appropriate other funds in the amount of one million two hundred fifty thousand dollars for the James “Tiger” Morton Catastrophic Illness Fund.

CHAPTER 7

(H. B. 210 — By Mr. Speaker, Mr. Kiss, and Delegates Martin, Michael, Staton, Douglas, Varner and Trump)

[Passed May 20, 1999; 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 auditor’s office—family law masters administration fund, fund
0117, fiscal year 2000, organization 1200, in the amount of one hundred fifty thousand dollars, and providing for the transfer of the funds; and making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand, to the department of health and human resources—family protection services board—domestic violence legal services fund, fund xxxx, fiscal year 2000, organization xxxx, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 13, 1999, which included a statement of the state fund, general revenue, setting forth therein the estimate of revenues for the fiscal year ending the thirtieth day of June, two thousand; and

WHEREAS, The governor, by executive message dated the twenty-second day of March, one thousand nine hundred ninety-nine, has increased the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand; and

WHEREAS, It appears from the governor’s executive budget document and executive message 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, two thousand; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to the auditor’s office-family law masters administration fund, fund 0117, fiscal year 2000, organization 1200, be supplemented and amended by increasing the total appropriation by one hundred fifty thousand dollars in the item of appropriation hereby amended to read as follows:

Title II—Appropriations.

Section 1. Appropriations from general revenue.

EXECUTIVE
4
10—Auditor’s Office—

Family Law Masters
Administration Fund
(WV Code Chapter 48A)

Fund 0117 FY 2000 Org 1200

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099 $ 500,000</td>
</tr>
<tr>
<td>Domestic Violence Legal Services Fund- Transfer</td>
<td>xxx $ 150,000</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified (activity 099) shall be expended for the administrative expenses of the family law masters program, excluding personal services and employee benefits. The above appropriation for Domestic Violence Legal Services Fund-Transfer (activity xxx) shall be transferred to the Domestic Violence Legal Services Fund, fund xxxx as created pursuant to the provisions of section four-c, article two-c, chapter forty-eight of the code of West Virginia.

And that chapter seven, acts of the Legislature, regular session, one thousand nine hundred ninety-nine, known as the “Budget Bill”, be supplemented and amended by adding to title II, section three thereof, the following:

TITLE II—APPROPRIATIONS.

Section 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

141b — Family Protection Services Board—

Domestic Violence Legal Services Fund
(WV Code Chapter 48)

Fund xxxx FY 2000 Org xxxx
The purpose of this supplementary appropriation bill is to supplement and amend the account in the budget act for the fiscal year ending the thirtieth day of June, two thousand, for the auditor's office-family law masters administration fund, fund 0117, fiscal year 2000, organization 1200, by adding a new line item of appropriation in the amount of one hundred fifty thousand dollars and adding new language to provide for the transfer of funds; and to provide for a new item of appropriation to be established in the department of health and human resources—family protection services board—domestic violence legal services fund, fund xxxx, fiscal year 2000, organization xxxx, in the amount of one hundred fifty thousand dollars for expenditure during fiscal year two thousand.

CHAPTER 8

(H. B. 211 — By Delegate Michael)

[Passed June 19, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the West Virginia schools for the deaf and the blind, fund no. 0320, fiscal year 1999, organization 0403, as originally appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, 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 West Virginia schools for the deaf and the blind, fund no. 0320, fiscal year 1999, organization 0403, be amended and reduced in the line item as follows:
TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION
39—West Virginia Schools for the Deaf and the Blind
(WV Code Chapters 18 and 18A)
Fund 0320 FY 1999 Org 0403

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$162,384</td>
</tr>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$162,384</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state fund, general revenue, to the West Virginia schools for the deaf and the blind, fund no. 0320, fiscal year 1999, organization 0403, be amended and increased in the line item as follows:

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase existing items in the aforesaid account for the designated spending unit. The appropriation for employee benefits is reduced by one hundred sixty-two thousand three hundred eighty-four dollars. The appropriation for personal services is increased by one hundred sixty-two thousand three hundred eighty-four dollars. The amounts as itemized for expenditure in the fiscal year ending
the thirtieth day of June, one thousand nine hundred ninety-nine, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 9

(H. B. 212 — By Delegate Michael)

[Passed June 19, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the tax division, fund 0470, fiscal year 2000, organization 0702, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0470, fiscal year 2000, organization 0702, be supplemented and amended to read as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$9,730,830</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$225,900</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$3,587,747</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Automation Project (fund 0470, activity 442), Automation Project—Total—Surplus (fund 0470, activity 673), Property Tax Electronic Data Processing System Network Project (fund 0470, activity 684), Administrative Hearing Examiner Program (fund 0470, activity 713), Property Tax and Coal Reserve Valuation Automation Project (fund 0470, activity 831) and Property Tax Valuation and Assessment System (fund 0470, activity 477) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by amending language with no new money being appropriated.
designated article eleven; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend and reenact sections nineteen and twenty-one, article one-a of said chapter; to amend and reenact sections three, six, seven, eleven, fourteen and sixteen, article one-b of said chapter; to further amend said article by adding thereto a new section, designated section seventeen; to amend article two of said chapter by adding thereto a new section, designated section seventeen; to amend and reenact section thirty-eight of said article; to amend and reenact sections nine, twenty and twenty-three, article four of said chapter; to amend chapter fifty-one of said code by adding thereto a new article, designated article two-a; to amend and reenact section fourteen, article three of said chapter; to amend and reenact section one, article fifty-nine of said code; to amend and reenact section one, article two of said chapter; and to amend and reenact section twenty-nine, article five, chapter sixty-one of said code, all relating to revising the law of domestic relations generally; defining terms used in divorce, annulment and separate maintenance cases; establishing the styles of petitions in domestic cases; establishing effective date for style change; denominating parties in domestic actions; establishing presumptions regarding certain forms of alimony; providing for the reduction or termination of certain forms of alimony when de facto marriage exists; establishing effective date of change in alimony eligibility; establishing criteria for the award of alimony; eliminating certain property allocated by equitable distribution from availability for alimony payments; exceptions; establishing mandatory reporting of income changes; providing for the disposition of marital property; establishing a spouse’s entitlement to future or contingent payments; establishing applicability of future or contingent provisions; providing for calculation of interest and effective date; precluding prejudgment interest in domestic relations matters; exceptions; establishing date magistrate court jurisdiction in domestic violence cases is to be limited; establishing a fee upon issuance of a protective order; requiring promulgation of time-keeping rules for magistrate courts in child support matters; transfer of jurisdiction to family court and circuit court judges; revising allocations to domestic violence legal services fund;
allocation of custodial and decision-making responsibility for children in domestic relations cases; establishing best interests of the child as primary objective; establishing criteria for being a party in an action for custody or decisionmaking; establishing mandatory parent education programs; requiring temporary and permanent parenting plans and agreements; providing for court-ordered services; mediation; limits on mediation; court-ordered investigations; appointment of guardians; judicial interviews of minor children; allocation of decision-making responsibility; modification of parenting plans; providing for dispute resolution; relocation of a parent constituting a material change of circumstances with regard to parental rights and responsibilities; enforcing parenting plans; providing for civil monetary sanctions for violations; providing for parental access to a child’s records; requiring notice to obligor; designation of custody for purposes of other state and federal statutes; providing for effect of enactment and operative dates; calculation of interest; limitation on overtime pay for calculation of child support; excluding reimbursed moneys from definition of gross income; clarifying eligibility for certain federal services; creating updated guidelines for child support; requiring employers of obligors to report change of circumstance to agency; computation of child support; promulgating worksheets for determination of support obligations; providing for adjustment of child support in shared physical custody cases; providing for modification of child support; establishing notice requirements; documenting claims for modification; providing for an expedited process for modification; authorizing a court to disregard child support formula in some circumstances; requiring judicial findings regarding investment of child support moneys; establishing operative date of amendments; providing for notice to unemployed obligors; reporting employment income; proceedings before a family law master; requiring family law master to assess certain fees and costs; limiting continuances of scheduled final hearings; circuit court review of recommended order; providing for the family court fund; establishing family court division of circuit courts; initial appointments; effective dates; reporting requirements for enforcement division; assignment of family law masters by family law circuits; establishing qualifications for family law
masters; establishing terms of office of family law masters; schedule of elections; criteria for handling vacancies in office; disciplinary procedures; grounds for discipline; appeal procedures; setting compensation for family law masters and staff members; applicability of rules of practice and procedure and rules of evidence; authorizing promulgation of local circuit rules of practice and procedure; jurisdiction of family law masters; establishing contempt powers of family law masters; effect of repealers and reenactments; imposition of fees for modification proceedings and providing for the disposition thereof; creation of family court fund; providing for the transfer of court security funds to the family court fund; increasing certain filing fees; mandating financially able litigants to pay applicable fees and costs; providing for criminal penalties; and establishing inability to pay as an affirmative defense in actions for past due child support and alimony.

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

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

Chapter

48. Domestic Relations.
48A. Enforcement of Family Obligations.
51. Courts and Their Officers.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.
61. Crimes and Their Punishment.

CHAPTER 48. DOMESTIC RELATIONS.

Article

2. Divorce, Annulment and Separate Maintenance.
2A. Prevention and Treatment of Domestic and Family Law Violence.
2C. Domestic Violence Act.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-1. Definitions.
§48-2-4a. Petition instituting a domestic relations action; answer.
§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.
§48-2-16. Effect of separation agreement; what considered in awarding alimony, child support or separate maintenance.
§48-2-37. Calculation of interest; accumulation of simple interest; prejudgment interest.

§48-2-1. Definitions.

1 For the purposes of this chapter and chapter forty-eight-a of this code, the words and phrases defined in the following subdivisions of this section, and any variation of those words and phrases required by the context, have the meanings ascribed
(1) "Alimony" means the allowance which a person pays to or in behalf of the support of his or her spouse or divorced spouse while they are separated or after they are divorced. The payment of alimony may be required by court order or by the terms of a separation agreement. Alimony may be paid in a lump sum or paid in installments as periodic alimony. Alimony includes temporary alimony as that term is used in section thirteen of this article, as well as alimony as that term is used in section fifteen of this article and elsewhere throughout this article.

(2) "Alimony in gross" means alimony payable either in a lump sum, or in periodic payments of a definite amount over a specific period of time. An alimony award is "alimony in gross" only if the award grants alimony in such terms that a determination can be made of the total amount to be paid as well as the time such payments will cease.

(3) "Antenuptial agreement" or "prenuptial agreement" means an agreement between a man and woman before marriage, but in contemplation and generally in consideration of marriage, whereby the property rights and interests of the prospective husband and wife, or both of them, are determined, or where property is secured to either or both of them, to their separate estate, or to their children or other persons. An antenuptial agreement may include provisions which define the respective property rights of the parties during the marriage, or in the event of the death of either or both of the parties, and may provide for the disposition of marital property upon an annulment of the marriage or a divorce or separation of the parties. A prenuptial agreement is void if at the time it is made either of the parties is a minor.

(4) "Caretaking functions" means tasks that involve interaction with the child or care of the child, including the direction of interaction and care by others. Caretaking functions include the following:
(A) Feeding, bedtime and wake-up routines, care of the child when sick or hurt, bathing, grooming, personal hygiene, dressing, recreation and play, physical safety, transportation and other functions that meet the daily physical needs of the child;

(B) Direction of the child’s various developmental needs, including the acquisition of motor and language skills, toilet training, self-confidence and maturation;

(C) Discipline, instruction in manners, assignment and supervision of chores and other tasks that attend to the child’s needs for behavioral control and self-restraint;

(D) Arrangements for the child’s education, including remedial or special services appropriate to the child’s needs and interests, communication with teachers and counselors and supervision of homework;

(E) The development and maintenance of appropriate interpersonal relationships with peers, siblings and adults;

(F) Arrangements for health care, including making appointments, communication with health care providers, medical follow-up and home health care;

(G) Moral guidance; and

(H) Arrangement of alternative care by a family member, baby-sitter or other child care provider or facility, including investigation of alternatives, communication with providers and supervision.

(5) "Custodial responsibility" refers to physical custodianship and supervision of a child. It usually includes, but does not necessarily require, the exercise of residential or overnight responsibility.

(6) "Decision-making responsibility" refers to authority for making significant life decisions on behalf of a child, including, but not limited to, the child’s education, spiritual guidance and health care.

(7) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary,
commission, bonus or otherwise, and includes periodic pay-
ments pursuant to a pension or retirement program. "Disposable 
earnings" means that part of the earnings of any individual 
remaining after the deduction from those earnings of any 
amounts required by law to be withheld.

(8) "Family law master" means a commissioner of the 
circuit court appointed or elected and authorized to hear certain 
domestic relations actions under section ten, article two-a, 
chapter fifty-one of this code.

(9) "Income" includes, but is not limited to, the following:

(A) Commissions, earnings, salaries, wages and other 
income due or to be due in the future to an individual from his 
employer and successor employers;

(B) Any payment due or to be due in the future to an 
individual from a profit-sharing plan, a pension plan, an 
insurance contract, an annuity, social security, unemployment 
compensation, supplemental employment benefits, workers’ 
compensation benefits, state lottery winnings and prizes and 
overtime pay; and

(C) Any amount of money which is owing to an individual 
as a debt from an individual, partnership, association, public or 
private corporation, the United States or any federal agency, 
this state or any political subdivision of this state, any other 
state or a political subdivision of another state, or any other 
legal entity which is indebted to the obligor.

(10) "Legal parent" means an individual defined as a 
parent, by law, on the basis of biological relationship, presumed 
biological relationship, legal adoption or other recognized 
grounds.

(11) "Marital property" means:

(A) All property and earnings acquired by either spouse 
during a marriage, including every valuable right and interest, 
corporeal or incorporeal, tangible or intangible, real or personal, 
regardless of the form of ownership, whether legal or benefi-
cial, whether individually held, held in trust by a third party, or
whether held by the parties to the marriage in some form of co-
ownership such as joint tenancy or tenancy in common, joint
tenancy with the right of survivorship, or any other form of
shared ownership recognized in other jurisdictions without this
state, except that marital property shall not include separate
property as defined in subdivision (19) of this section; and

(B) The amount of any increase in value in the separate
property of either of the parties to a marriage, which increase
results from: (i) An expenditure of funds which are marital
property, including an expenditure of such funds which reduces
indebtedness against separate property, extinguishes liens, or
otherwise increases the net value of separate property; or (ii)
work performed by either or both of the parties during the
marriage.

The definitions of “marital property” and “separate
property” contained in this section shall have no application
outside of the provisions of this article, and the common law as
to the ownership of the respective property and earnings of a
husband and wife, as altered by the provisions of article three
of this chapter and other provisions of this code, are not
abrogated by implication or otherwise, except as expressly
provided for by the provisions of this article as such provisions
are applied in actions brought under this article or for the
enforcement of rights under this article.

(12) “Mediation” means a method of alternative dispute
resolution in which a neutral third person helps resolve a
dispute. Mediation is an informal, nonadversarial process
whereby the neutral third person, the mediator, assists parties to
a dispute to resolve, by agreement, some or all of the differ-
ences between them. The mediator has no authority to render a
judgment on any issue of the dispute.

(13) “Mediator” means a neutral third person who inter-
poses between two contending parties, with their consent, for
the purpose of assisting them in settling their differences.

(14) “Parent” means a legal parent as defined in subdivision
(10) of this section unless otherwise specified.
(15) "Parenting functions" means tasks that serve the needs of the child or the child's residential family. Parenting functions include caretaking functions, as defined in subdivision (4) of this section. Parenting functions also include functions that are not caretaking functions, including:

(A) Provision of economic support;

(B) Participation in decisionmaking regarding the child's welfare;

(C) Maintenance or improvement of the family residence, home or furniture repair, home-improvement projects, yard work and house cleaning;

(D) Financial planning and organization, car repair and maintenance, food and clothing purchasing, cleaning and maintenance of clothing, and other tasks supporting the consumption and savings needs of the family; and

(E) Other functions usually performed by a parent or guardian that are important to the child's welfare and development.

(16) "Parenting plan" means a temporary parenting plan as defined in subdivision (22) of this section or a permanent parenting plan as defined in subdivision (17) of this section.

(17) "Permanent parenting plan" means a plan for parenting a child that is incorporated into a final order or subsequent modification order in a domestic relations action. The plan principally establishes, but is not limited to, the allocation of custodial responsibility and significant decision-making responsibility and provisions for resolution of subsequent disputes between the parents.

(18) "Rehabilitative alimony" means alimony payable for a specific and determinable period of time, designed to cease when the payee is, after the exercise of reasonable efforts, in a position of self-support.

(19) "Separate property" means:

(A) Property acquired by a person before marriage; or
(B) Property acquired by a person during marriage in exchange for separate property which was acquired before the marriage; or

(C) Property acquired by a person during marriage, but excluded from treatment as marital property by a valid agreement of the parties entered into before or during the marriage; or

(D) Property acquired by a party during marriage by gift, bequest, devise, descent or distribution; or

(E) Property acquired by a party during a marriage but after the separation of the parties and before the granting of a divorce, annulment or decree of separate maintenance; or

(F) Any increase in the value of separate property as defined in paragraph (A), (B), (C), (D) or (E) of this subdivision which is due to inflation or to a change in market value resulting from conditions outside the control of the parties.

(20) “Separation” or “separation of the parties” means the separation of the parties next preceding the filing of an action under the provisions of this article, which separation continues, without the parties cohabiting or otherwise living together as husband and wife, and without interruption.

(21) “Separation agreement” means a written agreement entered into by a husband and wife whereby they agree to live separate and apart from each other and, in connection therewith, agree to settle their property rights; or to provide for the custody and support of their minor child or children, if any; or to provide for the payment or waiver of alimony by either party to the other; or to otherwise settle and compromise issues arising out of their marital rights and obligations. Insofar as an antenuptial agreement as defined in subdivision (3) of this section affects the property rights of the parties or the disposition of property upon an annulment of the marriage, or a divorce or separation of the parties, such antenuptial agreement shall be regarded as a separation agreement under the provisions of this article.
(22) "Temporary parenting plan" means a plan incorporated into a temporary or interlocutory order that provides for the parenting of a child pending final resolution of a domestic relations action.

§48-2-4a. Petition instituting a domestic relations action; answer.

(a) A domestic relations action is instituted by the filing of a verified petition. On and after the first day of October, one thousand nine hundred ninety-nine, the formal style of a domestic relations petition and the caption for all subsequent pleadings is as follows:

(1) In an action for divorce, separate maintenance or annulment, the action may be styled "In Re the marriage of _______ and _______"; and

(2) In an action to establish a child support obligation or to allocate custodial responsibility and decision-making responsibility when the parties are not married, the action may be styled "In Re the Child(ren) of _______ and _______."

The parties are identified in all pleadings as "petitioner" and "respondent".

(b) The responsive pleading to a petition instituting a domestic relations action is denominated an answer. The form and requisites for an answer to a petition for divorce or any other responsive pleading shall be verified in accordance with the provisions of section ten, article two of this chapter and are governed by the rules of civil procedure.

(c) The provisions of this section will become effective on the first day of October, one thousand nine hundred ninety-nine.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

(a) Upon ordering a divorce or granting a decree of separate maintenance, the court may require either party to pay alimony in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party. Payments of alimony are to be ordinarily made from a party's income, but when the income
is not sufficient to adequately provide for those payments, the
court may, upon specific findings set forth in the order, order
the party required to make those payments to make them from
the corpus of his or her separate estate. An award of alimony
shall not be disproportionate to a party’s ability to pay as
disclosed by the evidence before the court.

(b) Upon ordering the annulment of a marriage or a divorce
or granting of decree of separate maintenance, the court may
further order all or any part of the following relief:

(1) The court may provide for the custody of minor children
of the parties, subject to such rights of visitation, both in and
out of the residence of the custodial parent or other person or
persons having custody, as may be appropriate under the
circumstances. In every action where visitation is awarded, the
court shall specify a schedule for visitation by the noncustodial
parent: Provided, That with respect to any existing order which
provided for visitation but which does not provide a specific
schedule for visitation by the noncustodial parent, upon motion
of any party, notice of hearing and hearing, the court shall issue
an order which provides a specific schedule of visitation by the
noncustodial parent;

(2) When the action involves a minor child or children, the
court shall require either party to pay child support in the form
of periodic installments for the maintenance of the minor
children of the parties in accordance with support guidelines
promulgated pursuant to article one-b, chapter forty-eight-a of
this code. Payments of child support are to be ordinarily made
from a party’s income, but in cases when the income is not
sufficient to adequately provide for those payments, the court
may, upon specific findings set forth in the order, order the
party required to make those payments to make them from the
corpus of his or her separate estate;

(3) When the action involves a minor child or children, the
court shall provide for medical support for any minor children
in accordance with section fifteen-a of this article;

(4) As an incident to requiring the payment of alimony or
child support, the court may order either party to continue in
effect existing policies of insurance covering the costs of health
care and hospitalization of the other party: Provided, That if the
other party is no longer eligible to be covered by such insurance
because of the granting of an annulment or divorce, the court
may require a party to substitute such insurance with a new
policy to cover the other party or may consider the prospective
cost of such insurance in awarding alimony to be paid in
periodic installments. Payments made to an insurer pursuant to
this subdivision, either directly or by a deduction from wages,
shall be deemed to be alimony or installment payments for the
distribution of marital property, in such proportion as the court
shall direct: Provided, however, That if the court does not set
forth in the order that a portion of such payments is to be
debted installment payments for the distribution of marital
property, then all such payments made pursuant to this subdivi-
sion shall be deemed to be alimony: Provided further, That the
designation of insurance coverage as alimony under the
provisions of this subdivision shall not, in and of itself, give rise
to a subsequent modification of the order to provide for alimony
other than insurance for covering the costs of health care and
hospitalization;

(5) The court may grant the exclusive use and occupancy of
the marital home to one of the parties, together with all or a
portion of the household goods, furniture and furnishings
reasonably necessary for such use and occupancy. Such use and
occupancy shall be for a definite period, ending at a specific
time set forth in the order, subject to modification upon the
petition of either party. Except in extraordinary cases supported
by specific findings set forth in the order granting relief, a grant
of the exclusive use and occupancy of the marital home shall be
limited to those situations when such use and occupancy is
reasonably necessary to accommodate the rearing of minor
children of the parties. The court may require payments to third
parties in the form of home loan installments, land contract
payments, rent, property taxes and insurance coverage if the
amount of such coverage is reduced to a fixed monetary amount
set forth in the court's order. When such third party payments
are ordered, the court shall specify whether such payments or
portions of payments are alimony, child support, a partial
distribution of marital property or an allocation of marital debt:

Provided, That if the court does not set forth in the order that a
portion of such payments is to be deemed child support or
installment payments for the distribution of marital property,
then all such payments made pursuant to this subdivision shall
be deemed to be alimony. When such third party payments are
ordered, the court shall specify whether such payments or
portions of payments are alimony, child support, a partial
distribution of marital property or an allocation of marital debt.
If the payments are not designated in an order and the parties
have waived any right to receive alimony, the court may
designate the payments upon motion by any party. Nothing
contained in this subdivision shall abrogate an existing contract
between either of the parties and a third party or affect the
rights and liabilities of either party or a third party under the
terms of such contract;

(6) As an incident to requiring the payment of alimony, the
court may grant the exclusive use and possession of one or
more motor vehicles to either of the parties. The court may
require payments to third parties in the form of automobile loan
installments or insurance coverage if available at reasonable
rates, and any such payments made pursuant to this subdivision
for the benefit of the other party shall be deemed to be alimony
or installment payments for the distribution of marital property,
as the court may direct. Nothing contained in this subdivision
shall abrogate an existing contract between either of the parties
and a third party or affect the rights and liabilities of either
party or a third party under the terms of such contract;

(7) When the pleadings include a specific request for
specific property or raise issues concerning the equitable
division of marital property as defined in section one of this
article, the court shall order such relief as may be required to
effect a just and equitable distribution of the property and to
protect the equitable interests of the parties therein;

(8) Unless a contrary disposition is ordered pursuant to
other provisions of this section, then upon the motion of either
party, the court may compel the other party to deliver to the moving party any of his or her separate estate which may be in the possession or control of the respondent party and may make such further order as is necessary to prevent either party from interfering with the separate estate of the other;

(9) When allegations of abuse have been proven, the court shall enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other or interfering with the custodial or visitation rights of the other. Such order may permanently enjoin the offending party from entering the school, business or place of employment of the other for the purpose of molesting or harassing the other; or from contacting the other, in person or by telephone, for the purpose of harassment or threats; or from harassing or verbally abusing the other in a public place; and

(10) The court may order either party to take necessary steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. Nothing contained in this subdivision shall affect the liability of the parties for indebtedness on any such account incurred before the transfer of such account.

(c) When an annulment or divorce is denied, the court shall retain jurisdiction of the case and may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(d) When a divorce or annulment is granted in this state upon constructive service of process and personal jurisdiction is thereafter obtained of the defendant in such case, the court may order all or any portion of the relief provided for in subsections (a) and (b) of this section which has been demanded or prayed for in the pleadings.

(e) After the entry of an order pursuant to the provisions of this section, the court may revise the order concerning the
maintenance of the parties and enter a new order concerning the
same, as the circumstances of the parties may require.

The court may also from time to time afterward, upon
motion of either of the parties and upon proper service, revise
such order to grant relief pursuant to subdivision (9), subsection
(b) of this section, and enter a new order concerning the same,
as the circumstances of the parties and the benefit of children
may require. The court may also from time to time afterward,
upon the motion of either of the parties or other proper person
having actual or legal custody of the minor child or children of
the parties, revise or alter the order concerning the custody and
support of the children, and make a new order concerning the
same, issuing it forthwith, as the circumstances of the parents
or other proper person or persons and the benefit of the children
may require: Provided, That all orders modifying child support
shall be in conformance with the requirements of support
guidelines promulgated pursuant to article one-b, chapter
forty-eight-a of this code: Provided, however, That an order
providing for child support payments may be revised or altered
for the reason, inter alia, that the existing order provides for
child support payments in an amount that is less than
eighty-five percent or more than one hundred fifteen percent of
the amount that would be required to be paid under the child
support guidelines promulgated pursuant to the provisions of
said section: Provided further, That the child support enforce-
ment division may review a child support order and, if appro-
priate, file a motion with the circuit court for modification of
the child support order pursuant to the provisions of section
thirty-five, article two, chapter forty-eight-a of this code.

In granting relief under this subsection, the court may,
when other means are not conveniently available, alter any prior
order of the court with respect to the distribution of marital
property, if such property is still held by the parties, and if
necessary to give effect to a modification of alimony, child
support or child custody or necessary to avoid an inequitable or
unjust result which would be caused by the manner in which the
modification will affect the prior distribution of marital
property.
(f) (1) When a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for alimony to continue beyond the death of the payor or the payee or to cease in such event. When alimony is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of alimony is to continue beyond the death of the payor or payee or is to cease, or when the parties have not entered into a separation agreement and alimony is awarded, the court shall have the discretion to determine, as a part of its order, whether such payments of alimony are to be continued beyond the death of the payor or payee or cease. In the event neither an agreement nor an order makes provision for the death of the payor or payee, alimony other than rehabilitative alimony or alimony in gross shall cease on the death of the payor or payee. In the event neither an agreement nor an order makes provision for the death of the payor, rehabilitative alimony continues beyond the payor’s death, in the absence of evidence that the payor’s estate is likely to be insufficient to meet other obligations or that other matters would make continuation after death inequitable. Rehabilitative alimony ceases with the payee’s death. In the event neither an agreement nor an order makes provision for the death of the payor or payee, alimony in gross continues beyond the payor’s or payee’s death.

(2) When a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for alimony to continue beyond the remarriage of the payee or to cease in such event. When alimony is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of alimony is to continue beyond the remarriage of the payee or is to cease, or when the parties have not entered into a separation agreement and alimony is awarded, the court shall have the discretion to determine, as a part of its order, whether such payments of alimony are to be continued beyond the remarriage of the payee. In the event neither an agreement nor an order makes provision for the
remarriage of the payee, alimony other than rehabilitative
alimony or alimony in gross shall cease on the remarriage of the
payee. Rehabilitative alimony does not cease upon the remar-
riage of the payee during the first four years of a rehabilitative
period. In the event neither an agreement nor an order makes
provision for the remarriage of the payee, alimony in gross
continues beyond the payee’s remarriage.

(g)(1) In the discretion of the court, an award of alimony
may be reduced or terminated upon specific written findings by
the court that since the granting of a divorce and the award of
alimony a de facto marriage has existed between the alimony
payee and another person.

(2) In determining whether an existing award of alimony or
spousal support should be reduced or terminated because of an
alleged de facto marriage between a payee and another person,
the court should elicit the nature and extent of the relationship
in question. The court should give consideration, without
limitation, to circumstances such as the following in determin-
ing the relationship of an ex-spouse to another person:

(A) The extent to which the ex-spouse and the other person
have held themselves out as a married couple by engaging in
conduct such as using the same last name, using a common
mailing address, referring to each other in terms such as “my
husband” or “my wife”, or otherwise conducting themselves in
a manner that evidences a stable marriage-like relationship;

(B) The period of time that the ex-spouse has resided with
another person not related by consanguinity or affinity in a
permanent place of abode;

(C) The duration and circumstances under which the ex-
spouse has maintained a continuing conjugal relationship with
the other person;

(D) The extent to which the ex-spouse and the other person
have pooled their assets or income or otherwise exhibited
financial interdependence;

(E) The extent to which the ex-spouse or the other person
has supported the other, in whole or in part;
(F) The extent to which the ex-spouse or the other person has performed valuable services for the other;

(G) The extent to which the ex-spouse or the other person has performed valuable services for the other’s company or employer;

(H) Whether the ex-spouse and the other person have worked together to create or enhance anything of value;

(I) Whether the ex-spouse and the other person have jointly contributed to the purchase of any real or personal property;

(J) Evidence in support of a claim that the ex-spouse and the other person have an express agreement regarding property sharing or support; or

(K) Evidence in support of a claim that the ex-spouse and the other person have an implied agreement regarding property sharing or support.

(3) On the issue of whether alimony should be reduced or terminated under this subsection, the burden is on the payor to prove by a preponderance of the evidence that a de facto marriage exists. If the court finds that the payor has failed to meet burden of proof on the issue, the court may award reasonable attorney’s fees to a payee who prevails in an action that sought to reduce or terminate alimony on the ground that a de facto marriage exists.

(4) The court shall order that a reduction or termination of alimony is retroactive to the date of service of the petition on the payee, unless the court finds that reimbursement of amounts already paid would cause an undue hardship on the payee.

(5) An award of rehabilitative alimony shall not be reduced or terminated because of the existence of a de facto marriage between the alimony payee and another person.

(6) An award of alimony in gross shall not be reduced or terminated because of the existence of a de facto marriage between the alimony payee and another person.
(7) An award of alimony shall not be reduced or terminated under the provisions of this subsection for conduct by an alimony payee that occurred before the first day of October, one thousand nine hundred ninety-nine.

(8) Nothing in this subsection shall be construed to abrogate the requirement that every marriage in this state be solemnized under a license or construed to recognize a common law marriage as valid.

(h) In addition to the disclosure requirements set forth in section thirty-three of this article, the court may order accounts to be taken as to all or any part of marital property or the separate estates of the parties and may direct that the accounts be taken as of the date of the marriage, the date upon which the parties separated or any other time in assisting the court in the determination and equitable division of property.

(i) In determining whether alimony is to be awarded, or in determining the amount of alimony, if any, to be awarded under the provisions of this section, the court shall consider and compare the fault or misconduct of either or both of the parties and the effect of such fault or misconduct as a contributing factor to the deterioration of the marital relationship. However, alimony shall not be awarded when both parties prove grounds for divorce and are denied a divorce, nor shall an award of alimony under the provisions of this section be ordered which directs the payment of alimony to a party determined to be at fault, when, as a grounds granting the divorce, such party is determined by the court:

(1) To have committed adultery; or

(2) To have been convicted for the commission of a crime which is a felony, subsequent to the marriage if such conviction has become final; or

(3) To have actually abandoned or deserted his or her spouse for six months.

(j) Whenever under the terms of this section or section thirteen of this article a court enters an order requiring the
payment of alimony or child support, if the court anticipates the payment of such alimony or child support or any portion thereof to be paid out of “disposable retired or retainer pay” as that term is defined in 10 U. S. C. § 1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

(k) Any order which provides for the custody or support of a minor child shall include:

(1) The name of the custodian;

(2) The amount of the support payments;

(3) The date the first payment is due;

(4) The frequency of the support payments;

(5) The event or events which trigger termination of the support obligation;

(6) A provision regarding wage withholding;

(7) The address where payments shall be sent;

(8) A provision for medical support; and

(9) When child support guidelines are not followed, a specific written finding pursuant to section fourteen, article one-b, chapter forty-eight-a of this code.

(l) Effective the first day of October, one thousand nine hundred ninety-nine, any order entered that provides for the payment of child support shall also include a statement that requires both parties to report any changes in gross income, either in source of employment or in the amount of gross income, to the child support enforcement division and to the other party. The notice shall not be required if the change in gross income is less than a fifteen percent change in gross income.
§48-2-16. Effect of separation agreement; what considered in awarding alimony, child support or separate maintenance.

(a) In cases where the parties to an action commenced under the provisions of this article have executed a separation agreement, if the court finds that the agreement is fair and reasonable, and not obtained by fraud, duress or other unconscionable conduct by one of the parties, and further finds that the parties, through the separation agreement, have expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings, then the court shall conform the relief which it is authorized to order under the provisions of sections thirteen and fifteen of this article to the separation agreement of the parties. The separation agreement may contractually fix the division of property between the parties and may determine whether alimony shall be awarded, whether an award of alimony, other than an award of rehabilitative alimony or alimony in gross, may be reduced or terminated because a de facto marriage exists between the alimony payee and another person, whether a court shall have continuing jurisdiction over the amount of an alimony award so as to increase or decrease the amount of alimony to be paid, whether alimony shall be awarded as a lump sum settlement in lieu of periodic payments, whether alimony shall continue beyond the death of the payor party or the remarriage of the payee party, or whether the alimony award shall be enforceable by contempt proceedings or other judicial remedies aside from contractual remedies. Any award of periodic payments of alimony shall be deemed to be judicially decreed and subject to subsequent modification unless there is some explicit, well expressed, clear, plain and unambiguous provision to the contrary set forth in the court-approved separation agreement or the order granting the divorce. Child support shall, under all circumstances, always be subject to continuing judicial modification.

(b) In cases where the parties to an action commenced under the provisions of this article have not executed a separation agreement; or have executed an agreement which is
incomplete or insufficient to resolve the outstanding issues between the parties, or where the court finds the separation agreement of the parties not to be fair and reasonable or clear and unambiguous, the court shall proceed to resolve the issues outstanding between the parties. The court shall consider the following factors in determining the amount of alimony, child support or separate maintenance, if any, to be ordered under the provisions of sections thirteen and fifteen of this article, as a supplement to or in lieu of the separation agreement:

(1) The length of time the parties were married;

(2) The period of time during the marriage when the parties actually lived together as husband and wife;

(3) The present employment income and other recurring earnings of each party from any source;

(4) The income-earning abilities of each of the parties, based upon such factors as educational background, training, employment skills, work experience, length of absence from the job market and custodial responsibilities for children;

(5) The distribution of marital property to be made under the terms of a separation agreement or by the court under the provisions of section thirty-two of this article, insofar as the distribution affects or will affect the earnings of the parties and their ability to pay or their need to receive alimony, child support or separate maintenance: Provided, That for the purposes of determining a spouse's ability to pay alimony, the court may not consider the income generated by property allocated to the payor spouse in connection with the division of marital property unless the court makes specific findings that a failure to consider income from the allocated property would result in substantial inequity;

(6) The ages and the physical, mental and emotional condition of each party;

(7) The educational qualifications of each party;

(8) Whether either party has foregone or postponed economic, education or employment opportunities during the course of the marriage;
(9) The standard of living established during the marriage;
(10) The likelihood that the party seeking alimony, child support or separate maintenance can substantially increase his or her income-earning abilities within a reasonable time by acquiring additional education or training;
(11) Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;
(12) The anticipated expense of obtaining the education and training described in subdivision (10) above;
(13) The costs of educating minor children;
(14) The costs of providing health care for each of the parties and their minor children;
(15) The tax consequences to each party;
(16) The extent to which it would be inappropriate for a party, because said party will be the custodian of a minor child or children, to seek employment outside the home;
(17) The financial need of each party;
(18) The legal obligations of each party to support himself or herself and to support any other person;
(19) Costs and care associated with a minor or adult child’s physical or mental disabilities; and
(20) Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable grant of alimony, child support or separate maintenance.

§48-2-32. Marital property disposition.

(a) Except as otherwise provided in this section, upon every judgment of annulment, divorce or separation, the court shall divide the marital property of the parties equally between the parties.

(b) In cases where the parties to an action commenced under the provisions of this article have executed a separation
agreement, then the court shall divide the marital property in accordance with the terms of the agreement, unless the court finds:

(1) That the agreement was obtained by fraud, duress or other unconscionable conduct by one of the parties; or

(2) That the parties, in the separation agreement, have not expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings; or

(3) That the agreement, viewed in the context of the actual contributions of the respective parties to the net value of the marital property of the parties, is so inequitable as to defeat the purposes of this section, and such agreement was inequitable at the time the same was executed.

(c) In the absence of a valid agreement, the court shall presume that all marital property is to be divided equally between the parties, but may alter this distribution, without regard to any attribution of fault to either party which may be alleged or proved in the course of the action, after a consideration of the following:

(1) The extent to which each party has contributed to the acquisition, preservation and maintenance, or increase in value of marital property by monetary contributions, including, but not limited to:

(A) Employment income and other earnings; and

(B) Funds which are separate property.

(2) The extent to which each party has contributed to the acquisition, preservation and maintenance or increase in value of marital property by nonmonetary contributions, including, but not limited to:

(A) Homemaker services;

(B) Child care services;
(C) Labor performed without compensation, or for less than
adequate compensation, in a family business or other business
entity in which one or both of the parties has an interest;

(D) Labor performed in the actual maintenance or improve-
ment of tangible marital property; and

(E) Labor performed in the management or investment of
assets which are marital property.

(3) The extent to which each party expended his or her
efforts during the marriage in a manner which limited or
decreased such party’s income-earning ability or increased the
income-earning ability of the other party, including, but not
limited to:

(A) Direct or indirect contributions by either party to the
education or training of the other party which has increased the
income-earning ability of such other party; and

(B) Foregoing by either party of employment or other
income-earning activity through an understanding of the parties
or at the insistence of the other party.

(4) The extent to which each party, during the marriage,
may have conducted himself or herself so as to dissipate or
depreciate the value of the marital property of the parties:
Provided, That except for a consideration of the economic
consequences of conduct as provided for in this subdivision,
fault or marital misconduct shall not be considered by the court
in determining the proper distribution of marital property.

(d) After considering the factors set forth in subsection (c)
of this section, the court shall:

(1) Determine the net value of all marital property of the
parties as of the date of the separation of the parties or as of
such later date determined by the court to be more appropriate
for attaining an equitable result. Where the value of the marital
property portion of a spouse’s entitlement to future payments
can be determined at the time of entering a final order in a
domestic relations action, the court may include it in reckoning
the worth of the marital property assigned to each spouse. In the
absence of an agreement between the parties, when the value of future payments is not known at the time of entering a final order in a domestic relations action, if their receipt is contingent on future events or not reasonably assured, or if for other reasons it is not equitable under the circumstances to include their value in the property assigned at the time of dissolution, the court may decline to do so; and

(A) Fix the spouses' respective shares in such future payments if and when received; or

(B) If it is not possible and practical to fix their share at the time of entering a final order in a domestic relations action, reserve jurisdiction to make an appropriate order at the earliest practical date;

If a valuation is made after a contingent or other future fee has been earned through the personal services or skills of a spouse, the portion that is marital property shall be in the same proportion to the total fee that the personal services or skills expended before the separation of the parties bears to the total personal skills or services expended. The provisions of this subdivision apply to pending cases when the issues of contingent fees or future earned fees have not been finally adjudicated.

(2) Designate the property which constitutes marital property, and define the interest therein to which each party is entitled and the value of their respective interest therein. In the case of an action wherein there is no agreement between the parties and the relief demanded requires the court to consider such factors as are described in subdivisions (1), (2), (3) and (4), subsection (c) of this section, if a consideration of factors only under said subdivisions (1) and (2) would result in an unequal division of marital property, and if an examination of the factors described in said subdivisions (3) and (4) produce a finding that a party: (A) Expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party; or (B) conducted himself or herself so as to dissipate or depreciate the value of the marital property of the
parties, then the court may, in the absence of a fair and just alimony award under the provisions of section fifteen of this article which adequately takes into account the facts which underlie the factors described in subdivisions (3) and (4), subsection (c) of this section, equitably adjust the definition of the parties’ interest in marital property, increasing the interest in marital property of a party adversely affected by the factors considered under said subdivisions who would otherwise be awarded less than one half of the marital property, to an interest not to exceed one half of the marital property;

(3) Designate the property which constitutes separate property of the respective parties or the separate property of their children;

(4) Determine the extent to which marital property is susceptible to division in accordance with the findings of the court as to the respective interests of the parties therein;

(5) In the case of any property which is not susceptible to division, ascertain the projected results of a sale of such property;

(6) Ascertain the projected effect of a division or transfer of ownership of income-producing property, in terms of the possible pecuniary loss to the parties or other persons which may result from an impairment of the property’s capacity to generate earnings; and

(7) Transfer title to such component parts of the marital property as may be necessary to achieve an equitable distribution of the marital property. To make such equitable distribution, the court may:

(A) Direct either party to transfer their interest in specific property to the other party;

(B) Permit either party to purchase from the other party their interest in specific property;

(C) Direct either party to pay a sum of money to the other party in lieu of transferring specific property or an interest therein, if necessary to adjust the equities and rights of the
parties, which sum may be paid in installments or otherwise, as the court may direct;

(D) Direct a party to transfer his or her property to the other party in substitution for property of the other party of equal value which the transferor is permitted to retain and assume ownership of; or

(E) Order a sale of specific property and an appropriate division of the net proceeds of such sale: Provided, That such sale may be by private sale, or through an agent or by judicial sale, whichever would facilitate a sale within a reasonable time at a fair price.

(e) In order to achieve the equitable distribution of marital property, the court shall, unless the parties otherwise agree, order, when necessary, the transfer of legal title to any property of the parties, giving preference to effecting equitable distribution through periodic or lump sum payments: Provided, That the court may order the transfer of legal title to motor vehicles, household goods and the former marital domicile without regard to such preference where the court determines it to be necessary or convenient. In any case involving the equitable distribution of: (1) Property acquired by bequest, devise, descent, distribution or gift; or (2) ownership interests in a business entity, the court shall, unless the parties otherwise agree, give preference to the retention of the ownership interests in such property. In the case of such business interests, the court shall give preference to the party having the closer involvement, larger ownership interest or greater dependency upon the business entity for income or other resources required to meet responsibilities imposed under this article, and shall also consider the effects of transfer or retention in terms of which alternative will best serve to preserve the value of the business entity or protect the business entity from undue hardship or from interference caused by one of the parties or by the divorce, annulment or decree of separate maintenance: Provided, however, That the court may, unless the parties otherwise agree, sever the business relationship of the parties and order the transfer of legal title to ownership interests in the business
entity from one party to the other, without regard to the limitations on the transfer of title to such property otherwise provided in this subsection, if such transfer is required to achieve the other purposes of this article: Provided further, That in all such cases the court shall order, or the agreement of the parties shall provide for, equitable payment or transfer of legal title to other property, of fair value in money or moneys' worth, in lieu of any ownership interests in a business entity which are ordered to be transferred under this subsection: And provided further, That the court may order the transfer of such business interests to a third party (such as the business entity itself or another principal in the business entity) where the interests of the parties under this article can be protected and at least one party consents thereto.

(f) In any order which divides or transfers the title to any property, determines the ownership or value of any property, designates the specific property to which any party is entitled or grants any monetary award, the court shall set out in detail its findings of fact and conclusions of law, and the reasons for dividing the property in the manner adopted.

(g) If an order entered in accordance with the provisions of this article requires the transfer of title to property and a party fails or refuses to execute a deed or other instrument necessary to convey title to such property, the deed or other instrument shall be executed by a special commissioner appointed by the court for the purpose of effecting such transfer of title pursuant to section seven, article twelve, chapter fifty-five of this code.

(h) As to any third party, the doctrine of equitable distribution of marital property and the provisions of this article shall be construed as creating no interest or title in property until and unless an order is entered under this article judicially defining such interest or approving a separation agreement which defines such interest. Neither this article nor the doctrine of equitable distribution of marital property shall be construed to create community property nor any other interest or estate in property except those previously recognized in this state. A husband or wife may alienate property at any time prior to the entry of an
order under the provisions of this article or prior to the
recording of a notice of lis pendens in accordance with the
provisions of section thirty-five of this article, and at anytime
and in any manner not otherwise prohibited by an order under
this article, in like manner and with like effect as if this article
and the doctrine of equitable distribution had not been adopted:

Provided, That as to any transfer prior to the entry of an order
under the provisions of this article, a transfer other than to a
bona fide purchaser for value shall be voidable if the court finds
such transfer to have been effected to avoid the application of
the provisions of this article or to otherwise be a fraudulent
conveyance. Upon the entry of any order under this article or
the admission to record of any notice with respect to an action
under this article, restraining the alienation of property of a
party, a bona fide purchaser for value shall take such title or
interest as he or she might have taken prior to the effective date
of this section and no purchaser for value need see to the
application of the proceeds of such purchase except to the
extent he or she would have been required so to do prior to the
effective date of this section: Provided, however, That as to
third parties nothing in this section shall be construed to limit
or otherwise defeat the interests or rights to property which any
husband or wife would have had in property prior to the
enactment of this section or prior to the adoption of the doctrine
of equitable distribution by the supreme court of appeals on the
twenty-fifth day of May, one thousand nine hundred eighty-
three: Provided further, That no order entered under this article
shall be construed to defeat the title of a third party transferee
thereof except to the extent that the power to effect such a
transfer of title or interest in such property is secured by a valid
and duly perfected lien and, as to any personal property,
secured by a duly perfected security interest.

(i) Notwithstanding the provisions of chapter eleven of this
code, no transfer of interest in or title to property under this
section shall be taxable as a transfer of property without
consideration nor, except as to alimony, create liability for
sales, use, inheritance and transfer or income taxes due the state
or any political subdivision nor require the payment of the
excise tax imposed under article twenty-two, chapter eleven of this code.

(j) Whenever under the terms of this article a court enters an order requiring a division of property, if the court anticipates the division of property will be effected by requiring sums to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U. S. C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

(k) A court may not award alimony or order equitable distribution of property between individuals who are not married to one another in accordance with the provisions of article one of this chapter.

(l) The amendments to this section effected by the reenactment of this section during the regular session of the Legislature, one thousand nine hundred ninety-six, are to be applied prospectively and shall have no application to any action for annulment, divorce or separate maintenance that was commenced on or before the effective date of this section.

§48-2-37. Calculation of interest; accumulation of simple interest; prejudgment interest.

(a) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section thirty-one, article six, chapter fifty-six of this code. On or after the ninth day of June, one thousand nine hundred ninety-five, interest shall accrue only upon the outstanding principal of such obligation. This section shall be construed to permit the accumulation of simple interest, and may not be construed to permit the compounding of interest. Interest which has accrued on unpaid installments accruing before the ninth day of June, one thousand nine hundred ninety-five, may not be modified by any court, irrespective of whether such installment accrued simple or compound interest: Provided, That unpaid installments upon which interest was compounded before the ninth
day of June, one thousand nine hundred ninety-five, shall accrue only simple interest thereon on and after the ninth day of June, one thousand nine hundred ninety-five.

(b) Except as otherwise provided in this subsection, prejudgment interest shall not be awarded in a domestic relations action. The circuit court may only award prejudgment interest in a domestic relations action against a party if the court finds, in writing, that the party engaged in conduct that would violate subsection (b), rule eleven of the West Virginia rules of civil procedure. If prejudgment interest is awarded, the court shall calculate prejudgment interest from the date the offending representation was presented to the court.

ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND FAMILY LAW VIOLENCE.

§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.


§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.

(a) Jurisdiction. — Circuit courts and magistrate courts, as constituted under chapter fifty of this code, have concurrent jurisdiction over proceedings under this article: Provided, That on and after the first day of April, two thousand one, magistrate court jurisdiction shall be limited, and thereafter, full hearings wherein a protective order is sought shall be heard before a circuit judge or a family law master.

(b) Venue. — The action may be heard in the county in which the domestic or family violence occurred, in the county in which the respondent is living or in the county in which the petitioner is living, either temporarily or permanently. If the parties are married to each other, the action may also be brought in the county in which an action for divorce between the parties may be brought as provided by section eight, article two of this chapter.
(c) Petitioner's rights. — The petitioner’s right to relief under this article shall not be affected by his or her leaving a residence or household to avoid further abuse.

(d) Priority of petitions. — Any petition filed under the provisions of this article shall be given priority over any other civil action before the court, except actions in which trial is in progress, and shall be docketed immediately upon filing. Any appeal to the circuit court of a magistrate’s judgment on a petition for relief under this article shall be heard within ten working days of the filing of the appeal.

(e) Full faith and credit. — Any protective order issued pursuant to this article shall be effective throughout the state in every county. Any protective order issued by any other state, territory or possession of the United States, Puerto Rico, the District of Columbia or Indian tribe shall be accorded full faith and credit and enforced as if it were an order of this state whether or not such relief is available in this state. A protective order from another jurisdiction is presumed to be valid if the order appears authentic on its face and shall be enforced in this state. If the validity of the order is contested, the court or law enforcement to which the order is presented shall, prior to the full hearing, determine the existence, validity and terms of such order in the issuing jurisdiction. A protective order from another jurisdiction may be enforced even if the order is not entered into the state law-enforcement information system described by section twelve of this article.

(f) Service by publication. — A protective order may be served on the respondent by means of a Class I legal advertisement published notice, with the publication area being the county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine of this code if: (i) The petitioner files an affidavit with the court stating that an attempt at personal service pursuant to rule four of the West Virginia rules of civil procedure has been unsuccessful or evidence is adduced at the hearing for the protective order that the respondent has left the state of West Virginia; and (ii) a copy of the order is mailed by certified or

(a) At the conclusion of the hearing, if the petitioner has proven the allegations of domestic or family violence, or that he or she reported or witnessed domestic or family violence against another and has, as a result, been abused, threatened, harassed or has been the subject of other actions to attempt to intimidate him or her, by a preponderance of the evidence, the court shall issue a protective order directing the respondent to refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner, the person who reported or witnessed family or domestic violence or the minor children, or engaging in other conduct that would place the petitioner, the person who reported or witnessed family or domestic violence or the minor children in reasonable fear of bodily injury. Where the respondent is present at the hearing and elects not to contest the allegations of domestic or family violence or does not contest the relief sought, the petitioner is not required to adduce evidence and prove the allegations of domestic or family violence and the court may directly address the issues of the relief requested.

(b) Where the petitioner is the victim of domestic or family violence, the terms of a protective order may include:

(1) Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;

(2) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children named in the order;

(3) Establishing terms of temporary visitation with regard to the minor children named in the order including, but not limited to, requiring third-party supervision of visitations if necessary to protect the petitioner and/or the minor children;

(4) Ordering the noncustodial parent to pay to the custodial parent a sum for temporary support and maintenance of the petitioner and children, if any;
(5) Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;

(6) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household or family members for the purpose of violating the protective order;

(7) Ordering the respondent to participate in an intervention program for perpetrators;

(8) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner;

(9) Providing for either party to obtain personal property or other items from a location, including granting temporary possession of motor vehicles owned by either or both of the parties, and providing for the safety of the parties while this occurs, including ordering a law-enforcement officer to accompany one or both of the parties;

(10) Prohibiting the respondent from using or possessing a firearm or other weapon, notwithstanding the fact that the respondent has a valid license to possess such firearm or other weapon;

(11) Informing the respondent that possession of a firearm while subject to a protective order is a violation of federal law;

(12) Ordering the respondent to reimburse the petitioner or other person for any expenses incurred as a result of the domestic or family violence, including, but not limited to, medical expenses, transportation and shelter; and

(13) Ordering the petitioner and respondent to refrain from transferring, conveying, alienating, encumbering or otherwise dealing with property which could otherwise be subject to the jurisdiction of the court or another court in an action for divorce or support, partition or in any other action affecting their interests in property.
(c) Where the petitioner or other person to be protected reported or was a witness to the family or domestic violence, the terms of a protective order may include:

(1) Ordering the respondent to refrain from abusing, contacting, telephoning, communicating, harassing, verbally abusing or otherwise intimidating the petitioner or other person to be protected; and

(2) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or other person to be protected, for the purpose of violating the protective order.

(d) Except as otherwise provided by subsection (d), section three-a of this article, a protective order issued by a magistrate, family law master or circuit judge pursuant to this article or subdivision (13), subsection (a), article two of this chapter, is effective for either ninety days or one hundred eighty days, in the discretion of the court. If the court enters an order for a period of ninety days, upon receipt of a written request from the petitioner prior to the expiration of the ninety-day period, the court shall extend its order for an additional ninety-day period.

(e) To be effective, a written request to extend an order from ninety days to one hundred eighty days must be submitted to the court prior to the expiration of the original ninety-day period. A notice of the extension shall be sent by the clerk of the court to the respondent by first class mail, addressed to the last known address of the respondent as indicated by the court's case filings. The extension of time is effective upon mailing of the notice.

(f) The court may amend the terms of a protective order at any time upon subsequent petition filed by either party. The protective order shall be in full force and effect in every county of this state and shall so state.

(g) No order under this article shall in any manner affect title to any real property.
(h) Certified copies of any order or extension notice made under the provisions of this section shall be issued to the petitioner, the respondent and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office or local office of the West Virginia state police within twenty-four hours of the entry of the order.

(i) Mutual protective orders are prohibited unless both parties have filed a petition under section four of this article and have proven the allegations of domestic or family violence by a preponderance of the evidence. This shall not prevent other persons, including the respondent, from filing a separate petition. The court may consolidate two or more petitions if he or she determines that consolidation will further the interests of justice and judicial economy. The court shall enter a separate order for each petition filed.

(j) Any protective order issued pursuant to this article shall contain on its face the following statement, printed in bold-faced type or in capital letters:

"VIOLATION OF THIS ORDER MAY BE PUNISHED BY CONFINEMENT IN A REGIONAL OR COUNTY JAIL FOR AS LONG AS ONE YEAR AND BY A FINE OF AS MUCH AS TWO THOUSAND DOLLARS"

(k) Any person against whom a protective order is issued after a full hearing pursuant to this section shall be assessed a fee of twenty-five dollars. Such fee shall be paid to the family court fund established pursuant to section twenty-three, article four, chapter forty-eight-a of this code.

(l) The supreme court of appeals shall promulgate a procedural rule to establish time-keeping requirements for magistrates, magistrate court clerks and magistrate assistants so as to assure the maximum funding of incentive payments, grants and other funding sources available to the state for the processing of cases filed for the establishment of temporary orders of child support pursuant to the provisions of this section.
ARTICLE 2C. DOMESTIC VIOLENCE ACT.

§48-2C-4c. Domestic violence legal services fund.

There is hereby established in the state treasury a special revenue account, designated as the “domestic violence legal services fund”, which shall be an appropriated fund for receipt of grants, gifts, fees, or federal or state funds designated for legal services for domestic violence victims. Expenditures from the fund shall be limited to attorneys employed by domestic violence shelters, or employed by nonprofit agencies which establish a collaborative relationship with a domestic violence shelter, that provide civil legal services to victims of domestic violence.

ARTICLE 11. ALLOCATION OF CUSTODIAL AND DECISION-MAKING RESPONSIBILITY FOR CHILDREN.

§48-11-101. Scope of article; legislative findings and declarations.
§48-11-102. Objectives; best interests of the child defined.
§48-11-103. Parties to an action under this article.
§48-11-104. Parent education classes.
§48-11-201. Parenting agreements.
§48-11-202. Court-ordered services.
§48-11-203. Proposed temporary parenting plan; temporary order; amendment; vacation of order.
§48-11-204. Criteria for temporary parenting plan.
§48-11-205. Permanent parenting plan.
§48-11-207. Allocation of significant decision-making responsibility.
§48-11-208. Criteria for parenting plan; dispute resolution.
§48-11-209. Parenting plan; limiting factors.
§48-11-301. Court-ordered investigation.
§48-11-303. Interview of the child by the court.
§48-11-401. Modification upon showing of changed circumstances or harm.
§48-11-402. Modification without showing of changed circumstances.
§48-11-403. Relocation of a parent.
§48-11-601. Access to a child’s records.
§48-11-602. Designation of custody for the purpose of other state and federal statutes.
§48-11-603. Effect of enactment; operative dates.
§48-11-604. Effect of enactment; modification of child visitation privileges in certain cases.

PART 1. SCOPE, OBJECTIVES, DEFINITIONS AND PARTIES.
§48-11-101. Scope of article; legislative findings and declarations.

(a) This article sets forth principles governing the allocation of custodial and decision-making responsibility for a minor child when the parents do not live together.

(b) The Legislature finds and declares that it is the public policy of this state to assure that the best interest of children is the court's primary concern in allocating custodial and decision-making responsibilities between parents who do not live together. In furtherance of this policy, the Legislature declares that a child's best interest will be served by assuring that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interest of their children, to educate parents on their rights and responsibilities and the effect their separation may have on children, to encourage mediation of disputes, and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or divorced.

§48-11-102. Objectives; best interests of the child defined.

(a) The primary objective of this article is to serve the child's best interests, by facilitating:

1. Stability of the child;

2. Parental planning and agreement about the child's custodial arrangements and upbringing;

3. Continuity of existing parent-child attachments;

4. Meaningful contact between a child and each parent;

5. Caretaking relationships by adults who love the child, know how to provide for the child's needs, and who place a high priority on doing so;

6. Security from exposure to physical or emotional harm; and

7. Expeditious, predictable decisionmaking and avoidance of prolonged uncertainty respecting arrangements for the child's care and control.
§48-11-103. Parties to an action under this article.

1 (1) Persons who have a right to be notified of and participate as a party in an action filed by another are:

2 (a) A legal parent of the child, as defined in section one, article two of this chapter;

3 (b) An adult allocated custodial responsibility or decision-making responsibility under a parenting plan regarding the child that is then in effect; or

4 (c) Persons who were parties to a prior order establishing custody and visitation, or who, under a parenting plan, were allocated custodial responsibility or decision-making responsibility.

5 (2) In exceptional cases the court may, in its discretion, grant permission to intervene to other persons or public agencies whose participation in the proceedings under this article it determines is likely to serve the child’s best interests. The court may place limitations on participation by the intervening party as the court determines to be appropriate. Such persons or public agencies do not have standing to initiate an action under this article.

§48-11-104. Parent education classes.

1 (a) A circuit court shall, by administrative rule or order, and with the approval of the supreme court of appeals, designate an organization or agency to establish and operate education programs designed for parents who have filed an action for divorce, paternity, support, separate maintenance or other custody proceeding and who have minor children. The education programs shall be designed to instruct and educate parents about the effects of divorce and custody disputes on their children and to teach parents ways to help their children and minimize their trauma.
(b) The circuit court shall issue an order requiring parties to an action for divorce involving a minor child or children to attend parent education classes established pursuant to subsection (a) of this section unless the court determines that attendance is not appropriate or necessary based on the conduct or circumstances of the parties. The court may, by order, establish sanctions for failure to attend. The court may also order parties to an action involving paternity, separate maintenance or modification of a divorce decree to attend such classes.

(c) The circuit court may require that each person attending a parent education class pay a fee, not to exceed twenty-five dollars, to the clerk of such court to defray the cost of materials and of hiring teachers: Provided, That where it is determined that a party is indigent and unable to pay for such classes, the court shall waive the payment of the fee for such party. The clerk of the circuit court shall, on or before the tenth day of each month, transmit all fees collected under this subsection to the state treasurer for deposit in the state treasury to the credit of special revenue fund to be known as the "parent education fund", which is hereby created. All moneys collected and received under this subsection and paid into the state treasury and credited to the parent education fund shall be used by the administrative office of the supreme court of appeals solely for reimbursing the provider of parent education classes for the costs of materials and of providing such classes. Such moneys shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(d) The administrative office of the supreme court of appeals shall submit a report to the joint committee on government and finance summarizing the effectiveness of any program of parent education no later than two years from the initiation of the program.

PART 2. PARENTING PLANS.

§48-11-201. Parenting agreements.

(a) If the parents agree to one or more provisions of a parenting plan, the court shall so order, unless it makes specific findings that:
(1) The agreement is not knowing or voluntary; or

(2) The plan would be harmful to the child.

(b) The court, at its discretion and on any basis it deems sufficient, may conduct an evidentiary hearing to determine whether there is a factual basis for a finding under subdivision (1) or (2), subsection (a) of this section. When there is credible information that child abuse as defined by section three, article one, chapter forty-nine of this code or domestic violence as defined by section two, article two-a, chapter forty-eight-a of this code has occurred, a hearing is mandatory and if the court determines that abuse has occurred, appropriate protective measures shall be ordered.

(c) If an agreement, in whole or in part, is not accepted by the court under the standards set forth in subsection (a) of this section, the court shall allow the parents the opportunity to negotiate another agreement.

§48-11-202. Court-ordered services.

(a) (1) The court shall inform the parents, or require them to be informed, about:

(A) How to prepare a parenting plan;

(B) The impact of family dissolution on children and how the needs of children facing family dissolution can best be addressed;

(C) The impact of domestic abuse on children, and resources for addressing domestic abuse; and

(D) Mediation or other nonjudicial procedures designed to help them achieve an agreement.

(2) The court shall require the parents to attend parent education classes.

(3) If parents are unable to resolve issues and agree to a parenting plan, the court shall require mediation, unless application of the procedural rules promulgated pursuant to the
provisions of subsection (b) of this section indicates that mediation is inappropriate in the particular case.

(b) The supreme court of appeals shall make and promulgate rules that will provide for premediation screening procedures to determine whether domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements would adversely affect the safety of a party, the ability of a party to meaningfully participate in the mediation, or the capacity of a party to freely and voluntarily consent to any proposed agreement reached as a result of the mediation. Such rules shall authorize a family law master or judge to consider alternatives to mediation which may aid the parties in establishing a parenting plan. Such rules shall not establish a per se bar to mediation if domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements exist, but may be the basis for the court, in its discretion, not to order services under subsection (a) of this section, or not to require a parent to have face-to-face meetings with the other parent.

(c) A mediator shall not make a recommendation to the court and may not reveal information that either parent has disclosed during mediation under a reasonable expectation of confidentiality, except that a mediator may reveal to the court credible information that he or she has received concerning domestic violence or child abuse.

(d) Mediation services authorized under subsection (a) of this section shall be ordered at an hourly cost that is reasonable in light of the financial circumstances of each parent, assessed on a uniform sliding scale. Where one parent's ability to pay for such services is significantly greater than the other, the court may order that parent to pay some or all of the expenses of the other. State revenues shall not be used to defray the costs for the services of a mediator: Provided, That the supreme court of appeals may use a portion of its budget to pay administrative costs associated with establishing and operating mediation programs: Provided, however, That grants and gifts to the state
that may be used to fund mediation are not to be considered as
state revenues for purposes of this subsection.

(e) The supreme court of appeals shall establish standards
for the qualification and training of mediators.

§48-11-203. Proposed temporary parenting plan; temporary
order; amendment; vacation of order.

(a) A parent seeking a temporary order relating to
parenting shall file and serve a proposed temporary parenting
plan by motion. The other parent, if contesting the proposed
temporary parenting plan, shall file and serve a responsive
proposed parenting plan. Either parent may move to have a
proposed temporary parenting plan entered as part of a tempo-
rary order. The parents may enter an agreed temporary
parenting plan at any time as part of a temporary order. The
proposed temporary parenting plan may be supported by
relevant evidence and shall be verified and shall state at a
minimum the following:

(1) The name, address and length of residence with the
person or persons with whom the child has lived for the
preceding twelve months;

(2) The performance by each parent during the last twelve
months of the parenting functions relating to the daily needs of
the child;

(3) The parents' work and child-care schedules for the
preceding twelve months;

(4) The parents' current work and child-care schedules; and

(5) Any of the circumstances set forth in section two
hundred nine of this article that are likely to pose a serious risk
to the child and that warrant limitation on the award to a parent
of temporary residence or time with the child pending entry of
a permanent parenting plan.

(b) At the hearing, the court shall enter a temporary
parenting order incorporating a temporary parenting plan which
includes:
(1) A schedule for the child’s time with each parent when appropriate;

(2) Designation of a temporary residence for the child;

(3) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with section two hundred seven of this article, neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(4) Provisions for temporary support for the child; and

(5) Restraining orders, if applicable.

(c) A parent may make a motion for an order to show cause and the court may enter a temporary order, including a temporary parenting plan, upon a showing of necessity.

(d) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of section two hundred nine of this article and is in the best interest of the child.

§48-11-204. Criteria for temporary parenting plan.

(a) After considering the proposed temporary parenting plan filed pursuant to section two hundred three of this article and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to:

(1) Which parent has taken greater responsibility during the last twelve months for performing caretaking functions relating to the daily needs of the child; and

(2) Which parenting arrangements will cause the least disruption to the child’s emotional stability while the action is pending.
(b) The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

(c) Upon credible evidence of one or more of the circumstances set forth in subsection (a), section two hundred nine of this article, the court shall issue a temporary order limiting or denying access to the child as required by that section, in order to protect the child or the other party, pending adjudication of the underlying facts.

(d) Expedited procedures shall be instituted to facilitate the prompt issuance of a parenting plan.

§48-11-205. Permanent parenting plan.

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably discoverable by the filing party or parties:

(1) The name, address and length of residence of any adults with whom the child has lived for one year or more, or in the case of a child less than one year old, any adults with whom the child has lived since the child’s birth;

(2) The name and address of each of the child’s parents and any other individuals with standing to participate in the action under section one hundred three of this article;

(3) A description of the allocation of caretaking and other parenting responsibilities performed by each person named in subdivisions (1) and (2) of this subsection during the twenty-four months preceding the filing of an action under this article;

(4) A description of the work and child-care schedules of any person seeking an allocation of custodial responsibility, and any expected changes to these schedules in the near future;

(5) A description of the child’s school and extracurricular activities;
(6) A description of any of the limiting factors as described in section two hundred nine of this article that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

(8) A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

The court shall maintain the confidentiality of any information required to be filed under this section when the person giving that information has a reasonable fear of domestic abuse and disclosure of the information would increase that fear.

(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect, as defined in section three, article one, chapter forty-nine of this code, or domestic or family violence as defined in section one hundred twenty-one, article two of this chapter has occurred. The process shall include assistance for possible victims of domestic abuse in complying with subdivision (6), subsection (a) of this section, and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children, and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred receive the court review that is mandated by subdivision (b), section two hundred one of this article.

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent with the provisions of sections two hundred six through two hundred nine of this article, containing:

(1) A provision for the child’s living arrangements and each parent’s custodial responsibility, which shall include either:
(A) A custodial schedule that designates in which parent’s home each minor child will reside on given days of the year; or 

(B) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(2) An allocation of decision-making responsibility as to significant matters reasonably likely to arise with respect to the child; and

(3) A provision consistent with section two hundred two of this article for resolution of disputes that arise under the plan, and remedies for violations of the plan.

(d) A parenting plan may, at the court’s discretion, contain provisions that address matters that are expected to arise in the event of a party’s relocation, or provide for future modifications in the parenting plan if specified contingencies occur.


(a) Unless otherwise resolved by agreement of the parents under section two hundred one of this article or unless manifestly harmful to the child, the court shall allocate custodial responsibility so that the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent performing caretaking functions for the child prior to the parents’ separation or, if the parents never lived together, before the filing of the action, except to the extent required under section two hundred nine of this article or necessary to achieve any of the following objectives:

(1) To permit the child to have a relationship with each parent who has performed a reasonable share of parenting functions;

(2) To accommodate the firm and reasonable preferences of a child who is fourteen years of age or older, and with regard to a child under fourteen years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent, to give that preference such weight as circum-

stances warrant;
(3) To keep siblings together when the court finds that doing so is necessary to their welfare;

(4) To protect the child’s welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child or in each parent’s demonstrated ability or availability to meet a child’s needs;

(5) To take into account any prior agreement of the parents that, under the circumstances as a whole including the reasonable expectations of the parents in the interest of the child, would be appropriate to consider;

(6) To avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child’s need for stability in light of economic, physical or other circumstances, including the distance between the parents’ residences, the cost and difficulty of transporting the child, the parents’ and child’s daily schedules, and the ability of the parents to cooperate in the arrangement;

(7) To apply the principles set forth in subsection (d), section four hundred three of this article if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section; and

(8) To consider the stage of a child’s development.

(b) In determining the proportion of caretaking functions each parent previously performed for the child under subsection (a) of this section, the court shall not consider the divisions of functions arising from temporary arrangements after separation, whether those arrangements are consensual or by court order. The court may take into account information relating to the temporary arrangements in determining other issues under this section.

(c) If the court is unable to allocate custodial responsibility under subsection (a) of this section because the allocation under that subsection would be manifestly harmful to the child, or
(d) In determining how to schedule the custodial time allocated to each parent, the court shall take account of the economic, physical and other practical circumstances such as those listed in subdivision (6), subsection (a) of this section.

§48-11-207. Allocation of significant decision-making responsibility.

(a) Unless otherwise resolved by agreement of the parents under section two hundred one of this article, the court shall allocate responsibility for making significant life decisions on behalf of the child, including the child’s education and health care, to one parent or to two parents jointly, in accordance with the child’s best interest, in light of:

(1) The allocation of custodial responsibility under section two hundred six of this article;

(2) The level of each parent’s participation in past decision-making on behalf of the child;

(3) The wishes of the parents;

(4) The level of ability and cooperation the parents have demonstrated in decision-making on behalf of the child;

(5) Prior agreements of the parties; and

(6) The existence of any limiting factors, as set forth in section two hundred nine of this article.

(b) If each of the child’s legal parents has been exercising a reasonable share of parenting functions for the child, the court shall presume that an allocation of decision-making responsibility to both parents jointly is in the child’s best interests. The presumption is overcome if there is a history of domestic abuse, or by a showing that joint allocation of decision-making responsibility is not in the child’s best interest.

(c) Unless otherwise provided or agreed by the parents, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day decisions for the child, while the child is in that parent’s care and control, including emergency decisions affecting the health and safety of the child.
shall presume that an allocation of decision-making responsibility to both parents jointly is in the child’s best interests. The presumption is overcome if there is a history of domestic abuse, or by a showing that joint allocation of decision-making responsibility is not in the child’s best interest.

(c) Unless otherwise provided or agreed by the parents, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day decisions for the child, while the child is in that parent’s care and control, including emergency decisions affecting the health and safety of the child.

§48-11-208. Criteria for parenting plan; dispute resolution.

(a) If provisions for resolving parental disputes are not ordered by the court pursuant to parenting agreement under section two hundred one of this article, the court shall order a method of resolving disputes that serves the child’s best interest in light of:

(1) The parents’ wishes and the stability of the child;

(2) Circumstances, including, but not limited to, financial circumstances, that may affect the parents ability to participate in a prescribed dispute resolution process; and

(3) The existence of any limiting factor, as set forth in section two hundred nine of this article.

(b) The court may order a nonjudicial process of dispute resolution by designating with particularity the person or agency to conduct the process or the method for selecting such a person or agency. The disposition of a dispute through a nonjudicial method of dispute resolution that has been ordered by the court without prior parental agreement is subject to de novo judicial review. If the parents have agreed in a parenting plan or by agreement thereafter to a binding resolution of their dispute by nonjudicial means, a decision by such means is binding upon the parents and must be enforced by the court, unless it is shown to be contrary to the best interests of the child, beyond the scope of the parents’ agreement, or the result of fraud, misconduct, corruption or other serious irregularity.
§48-11-209. Parenting plan; limiting factors.

(a) If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan:

(1) Has abused, neglected or abandoned a child, as defined by state law;

(2) Has sexually assaulted or sexually abused a child as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code;

(3) Has committed domestic violence, as defined in section two, article two-a of this chapter;

(4) Has interfered persistently with the other parent’s access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or

(5) Has repeatedly made fraudulent reports of domestic violence or child abuse.

(b) If a parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child’s parent from harm. The limitations that the court shall consider include, but are not limited to:

(1) An adjustment of the custodial responsibility of the parents, including the allocation of exclusive custodial responsibility to one of them;

(2) Supervision of the custodial time between a parent and the child;

(3) Exchange of the child between parents through an intermediary, or in a protected setting;
(4) Restraints on the parent from communication with or proximity to the other parent or the child;

(5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the twenty-four hour period immediately preceding such exercise;

(6) Denial of overnight custodial responsibility;

(7) Restrictions on the presence of specific persons while the parent is with the child;

(8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court deems necessary to provide for the safety of the child, a child's parent or any person whose safety immediately affects the child's welfare.

(c) If a parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.

PART 3. FACT FINDING.

§48-11-301. Court-ordered investigation.
(a) In its discretion, the court may order a written investigation and report to assist it in determining any issue relevant to proceedings under this article. The investigation and report may be made by the guardian ad litem, the staff of the court or other professional social service organization experienced in counseling children and families. The court shall specify the scope of the investigation or evaluation and the authority of the investigator.

(b) In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential parenting or custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past without obtaining the consent of the parent or the child’s custodian; but the child’s consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (c) of this section are fulfilled, the investigator’s report may be received in evidence at the hearing.

(c) The investigator shall deliver the investigator’s report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator’s file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (b) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

(d) Services and tests ordered under this section shall be ordered only if at no cost to the individuals involved, or at a cost that is reasonable in light of the available financial resources.

(a) In its discretion, the court may appoint a guardian ad litem to represent the child's best interests. The court shall specify the terms of the appointment, including the guardian's role, duties and scope of authority.

(b) In its discretion, the court may appoint a lawyer to represent the child, if the child is competent to direct the terms of the representation and court has a reasonable basis for finding that the appointment would be helpful in resolving the issues of the case. The court shall specify the terms of the appointment, including the lawyer's role, duties and scope of authority.

(c) When substantial allegations of domestic abuse have been made, the court shall order an investigation under section three hundred one of this article or make an appointment under subsection (a) or (b) of this section, unless the court is satisfied that the information necessary to evaluate the allegations will be adequately presented to the court without such order or appointment.

(d) Subject to whatever restrictions the court may impose or that may be imposed by the attorney-client privilege or by subsection (d), section two hundred two of this article, the court may require the child or parent to provide information to an individual or agency appointed by the court under section three hundred one of this article or subsection (a) or (b) of this section, and it may require any person having information about the child or parent to provide that information, even in the absence of consent by a parent or by the child, except if the information is otherwise protected by law.

(e) The investigator who submits a report or evidence to the court that has been requested under section three hundred one of this article and a guardian ad litem appointed under subsection (a) of this section who submits information or recommendations to the court are subject to cross-examination by the parties. A lawyer appointed under subsection (b) of this section
may not be a witness in the proceedings, except as allowed
under standards applicable in other civil proceedings.

(f) Services and tests ordered under this section shall be
ordered only if at no cost to the individuals involved, or at a
cost that is reasonable in light of the available financial
resources.

§48-11-303. Interview of the child by the court.

The court, in its discretion, may interview the child in
chambers or direct another person to interview the child, in
order to obtain information relating to the issues of the case.
The interview shall be conducted in accordance with rule 16 of
the rules of practice and procedure for family law, as promul-
gated by the supreme court of appeals.

PART 4. MODIFICATION OF PARENTING PLAN.

§48-11-401. Modification upon showing of changed circumstances
or harm.

(a) Except as provided in section four hundred two or four
hundred three of this article, a court shall modify a parenting
plan order if it finds, on the basis of facts that were not known
or have arisen since the entry of the prior order and were not
anticipated therein, that a substantial change has occurred in the
circumstances of the child or of one or both parents and a
modification is necessary to serve the best interests of the child.

(b) In exceptional circumstances, a court may modify a
parenting plan if it finds that the plan is not working as contem-
plated and in some specific way is manifestly harmful to the
child, even if a substantial change of circumstances has not
occurred.

(c) Unless the parents have agreed otherwise, the following
circumstances do not justify a significant modification of a
parenting plan except where harm to the child is shown:

(1) Circumstances resulting in an involuntary loss of
income, by loss of employment or otherwise, affecting the
parent's economic status;
(2) A parent’s remarriage or cohabitation; and

(3) Choice of reasonable caretaking arrangements for the child by a legal parent, including the child’s placement in day care.

(d) For purposes of subsection (a) of this section, the occurrence or worsening of a limiting factor, as defined in subsection (a), section two hundred nine of this article, after a parenting plan has been ordered by the court, constitutes a substantial change of circumstances and measures shall be ordered pursuant to section two hundred nine of this article to protect the child or the child’s parent.

§48-11-402. Modification without showing of changed circumstances.

(a) The court shall modify a parenting plan in accordance with a parenting agreement, unless it finds that the agreement is not knowing and voluntary or that it would be harmful to the child.

(b) The court may modify any provisions of the parenting plan without the showing of change circumstances required by subsection (a), section four hundred one of this article if the modification is in the child’s best interests, and the modification:

(1) Reflects the de facto arrangements under which the child has been receiving care from the petitioner, without objection, in substantial deviation from the parenting plan, for the preceding six months before the petition for modification is filed, provided the arrangement is not the result of a parent’s acquiescence resulting from the other parent’s domestic abuse;

(2) Constitutes a minor modification in the plan; or

(3) Is necessary to accommodate the reasonable and firm preferences of a child who has attained the age of fourteen.

(c) Evidence of repeated filings of fraudulent reports of domestic violence or child abuse is admissible in a domestic relations action between the involved parties when the alloca-
tion of custodial responsibilities is in issue, and the fraudulent accusations may be a factor considered by the court in making the allocation of custodial responsibilities.

§48-11-403. Relocation of a parent.

(a) The relocation of a parent constitutes a substantial change in the circumstances under subsection (a), section four hundred one of this article of the child only when it significantly impairs either parent’s ability to exercise responsibilities that the parent has been exercising.

(b) Unless otherwise ordered by the court, a parent who has responsibility under a parenting plan who changes, or intends to change, residences for more than ninety days must give a minimum of sixty days’ advance notice, or the most notice practicable under the circumstances, to any other parent with responsibility under the same parenting plan. Notice shall include:

(1) The relocation date;

(2) The address of the intended new residence;

(3) The specific reasons for the proposed relocation;

(4) A proposal for how custodial responsibility shall be modified, in light of the intended move; and

(5) Information for the other parent as to how he or she may respond to the proposed relocation or modification of custodial responsibility.

Failure to comply with the notice requirements of this section without good cause may be a factor in the determination of whether the relocation is in good faith under subsection (d) of this section, and is a basis for an award of reasonable expenses and reasonable attorneys fees to another parent that are attributable to such failure.

The supreme court of appeals shall make available through the offices of the circuit clerks and the family law masters a form notice that complies with the provisions of this subsection.

The supreme court of appeals shall promulgate procedural rules
that provide for an expedited hearing process to resolve issues arising from a relocation or proposed relocation.

(c) When changed circumstances are shown under subsection (a) of this section, the court shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain the same proportion of custodial responsibility being exercised by each of the parents. In making such revision, the court may consider the additional costs that a relocation imposes upon the respective parties for transportation and communication, and may equitably allocate such costs between the parties.

(d) When the relocation constituting changed circumstances under subsection (a) of this section renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent, the court shall modify the parenting plan in accordance with the child's best interests and in accordance with the following principles:

(1) A parent who has been exercising a significant majority of the custodial responsibility for the child should be allowed to relocate with the child so long as that parent shows that the relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of the purpose. The percentage of custodial responsibility that constitutes a significant majority of custodial responsibility is seventy percent or more. A relocation is for a legitimate purpose if it is to be close to significant family or other support networks, for significant health reasons, to protect the safety of the child or another member of the child's household from significant risk of harm, to pursue a significant employment or educational opportunity, or to be with one's spouse who is established, or who is pursuing a significant employment or educational opportunity, in another location. The relocating parent has the burden of proving the legitimacy of any other purpose. A move with a legitimate purpose is reasonable unless its purpose is shown to be substantially achievable without moving, or by moving to a location that is substantially less disruptive of the other parent's relationship to the child.
(2) If a relocation of the parent is in good faith for legitimate purpose and to a location that is reasonable in light of the purpose, and if neither has been exercising a significant majority of custodial responsibility for the child, the court shall reallocate custodial responsibility based on the best interest of the child, taking into account all relevant factors including the effects of the relocation on the child.

(3) If a parent does not establish that the purpose for that parent’s relocation is in good faith for a legitimate purpose into a location that is reasonable in light of the purpose, the court may modify the parenting plan in accordance with the child’s best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility, effective if and when the relocation occurs, but such a reallocation shall not be ordered if the relocating parent demonstrates that the child’s best interests would be served by the relocation.

(4) The court shall attempt to minimize impairment to a parent-child relationship caused by a parent’s relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents’ resources and circumstances and the developmental level of the child.

(e) In determining the proportion of caretaking functions each parent previously performed for the child under the parenting plan before relocation, the court shall not consider a division of functions arising from any arrangements made after a relocation but before a modification hearing on the issues related to relocation.

(f) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of rule 16 of the rules of practice and procedure for family law, as promulgated by the supreme court of appeals.
(a) If, upon a parental complaint, the court finds a parent intentionally and without good cause violated a provision of the court-ordered parenting plan, it shall enforce the remedy specified in the plan or, if no remedies are specified or they are clearly inadequate, it shall find the plan has been violated and order an appropriate remedy, which may include:

1. In the case of interference with the exercise of custodial responsibility for a child by the other parent, substitute time for that parent to make up for time missed with the child;

2. In the case of missed time by a parent, costs in recognition of lost opportunities by the other parent, in child care costs and other reasonable expenses in connection with the missed time;

3. A modification of the plan, if the requirements for a modification are met under section two hundred nine, four hundred one, four hundred two or four hundred three of this article, including an adjustment of the custodial responsibility of the parents or an allocation of exclusive custodial responsibility to one of them;

4. An order that the parent who violated the plan obtain appropriate counseling;

5. A civil penalty, in an amount of not more than one hundred dollars for a first offense, not more than five hundred dollars for a second offense, or not more than one thousand dollars for a third or subsequent offense, to be paid to the parent education fund as established under section one hundred four of this article;

6. Court costs, reasonable attorney’s fees and any other reasonable expenses in enforcing the plan; and

7. Any other appropriate remedy.

(b) Except as provided in a jointly submitted plan that has been ordered by the court, obligations established in a parenting plan are independent obligations, and it is not a defense to an action under this section by one parent that the other parent
failed to meet obligations under a parenting plan or child support order.

(c) An agreement between the parents to depart from the parenting plan can be a defense to a claim that the plan has been violated, even though the agreement was not made part of a court order, but only as to acts or omissions consistent with the agreement that occur before the agreement is disaffirmed by either parent.

PART 6. MISCELLANEOUS PROVISIONS.

§48-11-601. Access to a child’s records.

(a) (1) Each parent has full and equal access to a child’s educational records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. Educational records are academic, attendance and disciplinary records of public and private schools in all grades kindergarten through twelve and any form of alternative school. Educational records are any and all school records concerning the child that would otherwise be properly released to the primary custodial parent, including, but not limited to, report cards and progress reports, attendance records, disciplinary reports, results of the child’s performance on standardized tests and statewide tests and information on the performance of the school that the child attends on standardized statewide tests; curriculum materials of the class or classes in which the child is enrolled; names of the appropriate school personnel to contact if problems arise with the child; information concerning the academic performance standards, proficiencies, or skills the child is expected to accomplish; school rules, attendance policies, dress codes and procedures for visiting the school; and information about any psychological testing the school does involving the child.

(2) In addition to the right to receive school records, the nonresidential parent has the right to participate as a member of a parent advisory committee or any other organization comprised of parents of children at the school that the child attends.

(3) The nonresidential parent or noncustodial parent has the right to question anything in the child’s record that the parent
feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(4) Each parent has a right to arrange appointments for parent-teacher conferences absent a court order to the contrary. Neither parent can be compelled against their will to exercise this right by attending conferences jointly with the other parent.

(b) (1) Each parent has full and equal access to a child's medical records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. If necessary, either parent is required to authorize medical providers to release to the other parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to either parent.

(2) If the child is in the actual physical custody of one parent, that parent is required to promptly inform the other parent of any illness of the child which requires medical attention.

(3) Each parent is required to consult with the other parent prior to any elective surgery being performed on the child, and in the event emergency medical procedures are undertaken for the child which require the parental consent of either parent, if time permits, the other parent shall be consulted, or if time does not permit such consultation, the other parent shall be promptly informed of the emergency medical procedures: Provided, That nothing contained herein alters or amends the law of this state as it otherwise pertains to physicians or health care facilities obtaining parental consent prior to providing medical care or performing medical procedures.

(c) Each parent has full and equal access to a child's juvenile court records, process and pleadings, absent a court order to the contrary. Neither parent may veto any access requested by the other parent. Juvenile court records are limited to those records which are normally available to a parent of a child who is a subject of the juvenile justice system.

§48-11-602. Designation of custody for the purpose of other state and federal statutes.
1 Solely for the purposes of all other state and federal statutes
2 which require a designation or determination of custody, a
3 parenting plan shall designate the parent with whom the child
4 is scheduled to reside the majority of the time as the custodian
5 of the child. However, this designation shall not affect either
6 parent's rights and responsibilities under a parenting plan. In
7 the absence of such a designation, the parent with whom the
8 child is scheduled to reside the majority of the time shall be
9 deemed to be the custodian of the child for the purposes of such
10 federal and state statutes.

§48-11-603. Effect of enactment; operative dates.

1 (a) The enactment of this article during the second extraor-
2 dinary session of the Legislature, one thousand nine hundred
3 ninety-nine, is prospective in operation unless otherwise
4 expressly indicated.

5 (b) The provisions of section two hundred two of this
6 article, insofar as they provide for parent education and
7 mediation, become operative on the first day of January, two
8 thousand. Until that date, parent education and mediation with
9 regard to custody issues are discretionary unless made manda-
10 tory under a particular program or pilot project by rule or
11 direction of the supreme court of appeals or a circuit court.

12 (c) The provisions of this article that authorize a circuit
13 court in the absence of an agreement of the parents to order an
14 allocation of custodial responsibility and an allocation of
15 significant decision-making responsibility, become operative on
16 the first day of January, two thousand, at which time the
17 primary caretaker doctrine shall be replaced with a system that
18 allocates custodial and decision-making responsibility to the
19 parents in accordance with this article.

§48-11-604. Effect of enactment; modification of child visitation
privileges in certain cases.

1 (a) Parents who are parties to an order that establishes
2 visitation privileges with a child and that is in existence on the
3 first day of January, two thousand, may move for a modifica-
4 tion of the order, even without a change of circumstances, in
accordance with the provisions of this section, if the motion for
modification is made before the first day of July, two thousand,
moving the court to establish a parenting plan in accordance
with the provisions of this article.

(b) Modification of an order that awards visitation privileges may be reconsidered on a motion for modification if the
court first makes a preliminary finding that the following
factors are present:

(1) Visitation was based, in whole or in part, on a schedule
or guidelines;

(2) The party petitioning for modification has consistently
exercised or attempted to exercise the ordered visitation;

(3) The visitation provisions of the order sought to be
modified have been in effect for less than five years; and

(4) The facts as alleged in the motion, if taken as true,
would result in a parenting plan that is substantially different
from the result reached by application of the visitation schedule
or guidelines that the prior order was based on.

(c) If the court makes a preliminary finding that the factors
described in subsection (b) of this section are present, the case
shall proceed under the provisions of this article to establish a
parenting plan: Provided, That in no case shall the parent
petitioning for modification of a prior order of visitation be
allocated more than fifty percent of the custodial responsibility.
Nothing contained in this subsection shall be construed to
authorize the continued application of the primary caretaker
standard to modifications made under this section.

CHAPTER 48A. ENFORCEMENT OF
FAMILY OBLIGATIONS.

Article

1A. Definitions.
1B. Guidelines for Child Support Awards.
2. West Virginia Support Enforcement Commission; Child Support Enforcement Division; Establishment and Organization.


ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Calculation of interest.

(a) If an obligation to pay interest arises under this chapter, the rate of interest is that specified in section thirty-one, article six, chapter fifty-six of this code. Interest shall accrue only upon the outstanding principal of such obligation. On and after the ninth day of June, one thousand nine hundred ninety-five, this section shall be construed to permit the accumulation of simple interest, and may not be construed to permit the compounding of interest. Interest which accrued on unpaid installments accruing before the ninth day of June, one thousand nine hundred ninety-five, may not be modified by any court, irrespective of whether such installment accrued simple or compound interest: Provided, That unpaid installments upon which interest was compounded before the effective date of this section shall accrue only simple interest thereon on and after the ninth day of June, one thousand nine hundred ninety-five.

(b) Except as otherwise provided in this subsection, prejudgment interest shall not be awarded in a domestic relations action. The circuit court may only award prejudgment interest in a domestic relations action against a party if the court finds, in writing, that the party engaged in conduct that would violate subsection (b), rule eleven of the West Virginia rules of civil procedure. If prejudgment interest is awarded, the court shall calculate prejudgment interest from the date the offending representation was presented to the court.

ARTICLE 1A. DEFINITIONS.


§48A-1A-21. Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act.


(a) “Gross income” means all earned and unearned income.

(b) 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 shall 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) 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: Provided, That reimbursement of actual expenses incurred and documented shall not be included as gross income;

(5) Attributed income of the parent, calculated in accordance with the provisions of section three, article one-a of this chapter;

(6) An amount equal to fifty percent of the average compensation paid for personal services as overtime compensation during the preceding thirty-six months: Provided, That overtime compensation may be excluded from gross income if the parent with the overtime income demonstrates to the court 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 the 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 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 temporary assistance for needy families, supplemental security income and food stamps; and

(4) A child's income unless the court determines that the child's income substantially reduces the family's living expenses.

§48A-1A-21. Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act.

(a) "Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act" means:
An individual who has applied for or is receiving services from the child support enforcement division and who is the custodial parent of a child, or the primary caretaker of a child, or the guardian of the property of a child when:

(A) Such child has a parent and child relationship with an obligor who is not such custodial parent, primary caretaker or guardian; and

(B) The obligor with whom the child has a parent and child relationship is not meeting an obligation to support the child, or has not met such obligation in the past; or

(2) An individual who has applied for or is receiving services from the child support enforcement division and who is an adult or an emancipated minor whose spouse or former spouse has been ordered by a court of competent jurisdiction to pay spousal support to the individual, whether such support is denominated alimony or separate maintenance, or is identified by some other terminology, thus establishing a support obligation with respect to such spouse, when the obligor required to pay such spousal support is not meeting the obligation, or has not met such obligation in the past; or

(3) Any individual who is an obligee in a support order, entered by a court of competent jurisdiction after the thirty-first day of December, one thousand nine hundred ninety-three.

(b) The filing of an action wherein the establishment or enforcement of child support is an issue constitutes an application to receive services from the child support enforcement division, if the individual filing the action is otherwise eligible for such services: Provided, That any such individual has the option to decline the receipt of such services.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48A-1B-6. Computation of child support order in sole custody cases.
§48A-1B-7. Shared physical custody adjustment.
§48A-1B-16. Investment of child support.
§48A-1B-17. Operative date of certain amendments.

(a) The basic child support obligation is determined from the following table of monthly basic child support obligations:

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<td>1934</td>
<td>2276</td>
<td>2515</td>
<td>2726</td>
<td>2917</td>
</tr>
</tbody>
</table>

3 (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 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 may also compute the basic child support obligation for combined adjusted gross incomes above fifteen thousand dollars by the following:

(1) One child — $1,338 + 0.088 x combined adjusted gross income above fifteen thousand dollars per month;
(2) Two children — $1,934 + 0.129 x combined adjusted gross income above fifteen thousand dollars per month;
(3) Three children — $2,276 + 0.153 x combined adjusted gross income above fifteen thousand dollars per month;
(4) Four children — $2,515 + 0.169 x combined adjusted gross income above fifteen thousand dollars per month;
(5) Five children — $2,726 + 0.183 x combined adjusted gross income above fifteen thousand dollars per month; and
(6) Six children — $2,917 + 0.196 x combined adjusted gross income above fifteen thousand dollars per month.

§48A-1B-6. Computation of child support order in sole custody cases.

(a) For sole custody cases, the total child support obligation consists of the basic child support obligation plus the child's share of any unreimbursed health care expenses, work-related
(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 obligor'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 calculated using the following worksheet:

**WORKSHEET A: SOLE PHYSICAL CUSTODY**

IN THE CIRCUIT COURT OF ________ COUNTY, WEST VIRGINIA

CASE NO._______

Mother: _______________ SS No.: _______________ Primary Custodial parent? □ Yes □ No
Father: _______________ SS No.: _______________ Primary 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>
<tr>
<td></td>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<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>(Exclusive of overtime compensation)</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>c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48A-1A-19(b)(6)</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</td>
<td>%</td>
<td>%</td>
<td>100%</td>
</tr>
<tr>
<td>(Each parent's income from line 2 divided by Combined Income)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 4. BASIC OBLIGATION  
(Use Line 2 combined to find amount from schedule.) |  |  | $ |
|---|---|---|---|
| 5. ADJUSTMENTS  
(Expenses paid directly by each parent) |  |  |  |
| a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.) | $ | $ |  |
| b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs. | $ | $ |  |
| c. Extraordinary Expenses (Agreed to by parents or by order of the court.) | $ | $ |  |
| d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court.) |  |  |  |
| e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent's totals together for Combined amount.) | $ | $ | $ |
| 6. TOTAL SUPPORT OBLIGATION  
(Add line 4 and line 5e Combined.) |  |  | $ |
| 7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION  
(Line 3 x line 6 for each parent.) | $ | $ |  |
| 8. NONCUSTODIAL PARENT ADJUSTMENT  
(Enter noncustodial parent's line 5e.) | $ | $ |  |
| 9. RECOMMENDED CHILD SUPPORT ORDER  
(Subtract line 8 from line 7 for the noncustodial parent only. Leave custodial parent column blank.) | $ | $ |  |

**PART II. ABILITY TO PAY CALCULATION**  
(Complete if the noncustodial parent's adjusted monthly gross income is below $1,550.)

| 10. Spendable Income  
(0.80 x line 2 for noncustodial parent only.) |  |  |  |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>11. Self Support Reserve</td>
<td>$500</td>
<td>$500</td>
<td></td>
</tr>
</tbody>
</table>
| 12. Income Available for Support  
(Line 10 - line 11. If less than $50, then $50) |  |  |  |
13. Adjusted Child Support Order  
(Lessor of Line 9 and Line 12.)

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 five hundred fifty 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 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 additional 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**

IN THE CIRCUIT COURT OF _______ COUNTY, WEST VIRGINIA

CASE NO.________

Mother: ___________________________ SS No.: ____________ Primary Custodial parent? □ Yes □ No
Father: ___________________________ SS No.: ____________ Primary Custodial parent? □ Yes □ No
## Part I. Basic Obligation

<table>
<thead>
<tr>
<th>Mother</th>
<th>Father</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

1. **Monthly Gross Income**

<table>
<thead>
<tr>
<th>Exclusive of overtime compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minus preexisting child support payment</td>
</tr>
<tr>
<td>Minus maintenance paid</td>
</tr>
<tr>
<td>Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48A-1A-19(b)(6)</td>
</tr>
</tbody>
</table>

2. **Monthly Adjusted Gross Income**

<table>
<thead>
<tr>
<th>$</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
</table>

3. **Percentage Share of Income**

<table>
<thead>
<tr>
<th>Each parent's income from line 2 divided by Combined Income</th>
<th>100%</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>%</td>
</tr>
</tbody>
</table>

4. **Basic Obligation** (Use line 2 Combined to find amount from Child Support Schedule.)

<table>
<thead>
<tr>
<th>$</th>
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</thead>
</table>

## Part II. Shared Custody Adjustment

5. Shared Custody Basic Obligation (line 4 x 1.50)

<table>
<thead>
<tr>
<th>$</th>
</tr>
</thead>
</table>

6. Each Parent's Share (Line 5 x each parent's line 3)

<table>
<thead>
<tr>
<th>$</th>
<th>$</th>
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</thead>
</table>

7. Overnights with Each Parent (must total 365)

<table>
<thead>
<tr>
<th>365</th>
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</thead>
</table>

8. Percentage with Each Parent (Line 7 divided by 365)

<table>
<thead>
<tr>
<th>%</th>
<th>%</th>
<th>100%</th>
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</table>

9. Amount Retained (Line 6 x line 8 for each parent)

<table>
<thead>
<tr>
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10. Each Parent's Obligation (Line 6 - line 9)

<table>
<thead>
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11. **Amount Transferred for Basic Obligation** (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other parent the difference. Enter $0 for other parent.)

<table>
<thead>
<tr>
<th>$</th>
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</table>

## Part III. Adjustments for Additional Expenses

(Expenses paid directly by each parent.)
<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>12a</td>
<td>Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>12b</td>
<td>Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>12c</td>
<td>Extraordinary Additional Expenses (Agreed to by parents or by order of the court or master.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>12d</td>
<td>Minus Extraordinary Adjustments (Agreed to by parents or by order of the court or master.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>12e</td>
<td>Total Adjustments (For each column, add 11a, 11b, and 11c. Subtract line 11d. Add the parent's totals together for Combined amount.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>13</td>
<td>Each Parent's Share of Additional Expenses (Line 3 x line 12e Combined.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>14</td>
<td>Each Parent's Net Share of Additional Direct Expenses (Each parent's line 13-line 12e. If negative number, enter $0)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>15</td>
<td>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 $0 for other parent.)</td>
<td>$</td>
<td>$</td>
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</tbody>
</table>

**PART IV. RECOMMENDED CHILD SUPPORT ORDER**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>TOTAL AMOUNT TRANSFERRED (Line 11 + line 15)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>17</td>
<td>RECOMMENDED CHILD SUPPORT ORDER (Subtract smaller amount on line 16 from larger amount on line 16. Parent with larger amount on line 16 owes the other parent the difference.)</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

Comments, calculations, or rebuttals to schedule or adjustments

PREPARED BY: ________________________________  Date: ________________________________

(a) The provisions of a child support order may be modified if there is a substantial change of circumstances. For purposes of this section, 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.

(b) An expedited process for modification of a child support order may be utilized if either parent experiences a substantial change of circumstances resulting in a decrease in income due to loss of employment or other involuntary cause or an increase in income due to promotion, change in employment, reemployment, or other such change in employment status. The party seeking the recalculation of support and modification of the support order shall file a description of the decrease or increase in income and an explanation of the cause of the decrease or increase on a standardized form to be provided by the secretary-clerk or other employee of the family court. The standardized form shall be verified by the filing party. Any available documentary evidence shall be filed with the standardized form. Based upon the filing and information available in the case record, the amount of support shall be tentatively recalculated. The secretary-clerk shall cause a notice of the filing, a copy of the standardized form, and the support calculations to be served upon the other party and upon the local office of the child support enforcement division for the county in which the circuit court is located in the same manner as original process under rule 4(d) of the rules of civil procedure. The notice shall fix a date fourteen days from the date of mailing, and inform the party that unless the recalculation is contested and a hearing request is made on or before the date fixed, the proposed modification will be made effective. If the filing is contested, the proposed modification shall be set for hearing; otherwise, the family law master shall prepare a recommended default order for entry by the circuit judge. Either party may move to set aside a default entered by the circuit clerk or a judgment by default entered by the clerk or the court, pursuant to the provisions of rule 55 or rule 60(b) of the rules of civil
procedure. If an obligor uses the provisions of this section to expeditiously reduce his or her child support obligation, the order that effected the reduction shall also require the obligor to notify the obligee of reemployment, new employment or other such change in employment status that results in an increase in income. If an obligee uses the provisions of this section to expeditiously increase his or her child support obligation, the order that effected the increase shall also require the obligee to notify the obligor of reemployment, new employment or other such change in employment status that results in an increase in income of the obligee.

(c) The supreme court of appeals shall develop the standardized form required by subsection (b) of this section.


(a) If the court finds that the guidelines are inappropriate in a specific case, the court may either disregard the guidelines or adjust the guidelines-based award to accommodate the needs of the child or children or the circumstances of the parent or parents. In either case, the reason for the deviation and the amount of the calculated guidelines award must be stated on the record (preferably in writing on the worksheet or in the order). Such findings clarify the basis of the order if appealed or modified in the future.

(b) These guidelines do not take into account the economic impact of the following factors and can be possible reasons for deviation:

(1) Special needs of the child or support obligor, including, but not limited to, the special needs of a minor or adult child who is physically or mentally disabled;

(2) Educational expenses for the child or the parent (i.e. those incurred for private, parochial, or trade schools, other secondary schools, or post-secondary education where there is tuition or costs beyond state and local tax contributions);

(3) Families with more than six children;
(4) Long distance visitation costs;
(5) The child resides with third party;
(6) The needs of another child or children to whom the obligor owes a duty of support;
(7) The extent to which the obligor's income depends on nonrecurring or nonguaranteed income; or
(8) Whether the total of alimony, child support and child care costs subtracted from an obligor's income reduces that income to less than the federal poverty level and conversely, whether deviation from child support guidelines would reduce the income of the child's household to less than the federal poverty level.

§48A-1B-16. Investment of child support.

(a) 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.

(b) If the amount of child support ordered per child exceeds the sum of two thousand dollars per month, the court is required to make a finding, in writing, as to whether investments shall be made as provided for in subsection (a) of this section.

(c) 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.

§48A-1B-17. Operative date of certain amendments.

1 The amendments to this article made during the second extraordinary session of the Legislature, one thousand nine hundred ninety-nine, are operable after the thirtieth day of September, one thousand nine hundred ninety-nine.

ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION; CHILD SUPPORT ENFORCEMENT DIVISION; ESTABLISHMENT AND ORGANIZATION.

§48A-2-17. Notice to unemployed obligor.

§48A-2-38. Acceptance of federal purposes; compliance with federal requirements and standards.

§48A-2-17. Notice to unemployed obligor.

1 Upon receipt of a report from an employer stating that a support obligor has been discharged or laid off or has resigned or voluntarily quit, the child support enforcement division shall send a notice to the obligor, informing the obligor of the availability of a modification of the support award and of the services that may be available to him or her from the division. The division shall also inform the obligor of his or her possible entitlement to a reduction in court-ordered support payments; that a failure to obtain a modification will result in the previously-ordered award remaining in effect; and that substantial arrearage might accumulate and remain as judgments against him or her.

§48A-2-38. Acceptance of federal purposes; compliance with federal requirements and standards.

1 (a) The state assents to the purposes of the federal laws regarding child support and establishment of paternity and agrees to accept federal appropriations and other forms of assistance made under or pursuant thereto, and authorizes the receipt of such appropriations into the state treasury and the
receipt of other forms of assistance by the child support enforcement division for expenditure, disbursement and distribution by the division in accordance with the provisions of this chapter and the conditions imposed by applicable federal laws, rules and regulations.

(b) Insofar as such actions are consistent with the laws of this state granting authority to the division and the director, the division shall comply with such requirements and standards as the secretary of the federal department of health and human services may have determined, as of the effective date of this section, to be necessary for the establishment of an effective program for locating obligors, establishing paternity, obtaining support orders and collecting support payments.

(c) The director shall propose for promulgation a legislative rule in accordance with the provisions of chapter twenty-nine-a of this code, to establish time-keeping requirements to assure the maximum funding of incentive payments, grants and other funding sources available to the state for the processing of cases filed for the location of absent parents, the establishment of paternity, and the establishment, modification or enforcement of orders of child support.

ARTICLE 4. PROCEEDING BEFORE A FAMILY LAW MASTER.

§48A-4-9. Hearing procedures.

§48A-4-20. Circuit court review of family law master's recommended order.

§48A-4-23. Family court fund.

§48A-4-9. Hearing procedures.

(a) This section applies, according to the provisions thereof, to hearings required by section ten, article two-a, chapter fifty-one of this code to be conducted by a family law master.

(b) A family law master to whom a matter is referred pursuant to the provisions of section ten, article two-a, chapter fifty-one of this code shall preside at the taking of evidence.

(c) A family law master presiding at a hearing under the provisions of this chapter may:
(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties and otherwise take testimony, receive relevant evidence and establish a record;

(2) Rule on motions for discovery and offers of proof;

(3) Take depositions or have depositions taken when the ends of justice may be served;

(4) Regulate the course of the hearing;

(5) Hold pretrial conferences for the settlement or simplification of issues and enter time-frame orders which shall include, but not be limited to, discovery cut-offs, exchange of witness lists and agreements on stipulations, contested issues and hearing schedules;

(6) Make and enter temporary orders on procedural matters, including, but not limited to, substitution of counsel, amendment of pleadings, requests for hearings and other similar matters;

(7) Accept voluntary acknowledgments of support liability or paternity;

(8) Accept stipulated agreements;

(9) Prepare default orders for entry if the person against whom an action is brought does not respond to notice or process within the time required;

(10) Recommend orders in accordance with the provisions of section thirteen of this article;

(11) Require the issuance of subpoenas and subpoenas duces tecum, issue writs of attachment, hold hearings in aid of execution and propound interrogatories in aid of execution and fix bond or other security in connection with an action for enforcement in a child or spousal support matter; and
(12) Take other action authorized by general order of the circuit court or the chief judge thereof consistent with the provisions of this chapter.

(d) Except as otherwise provided by law, a moving party has the burden of proof on a particular question presented. Any oral or documentary evidence may be received, but the family law master shall exclude irrelevant, immaterial or unduly repetitious evidence. A party is entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In determining claims for money due or the amount of payments to be made, when a party will not be prejudiced thereby, the family law master may adopt procedures for the submission of all or part of the evidence in written form.

(e) Hearings before a family law master shall be recorded electronically. A magnetic tape or other electronic recording medium on which a hearing is recorded shall be indexed and securely preserved by the secretary-clerk of the family law master and shall not be placed in the case file in the office of the circuit clerk: Provided, That upon the request of the family law master, such magnetic tapes or other electronic recording media shall be stored by the clerk of the circuit court. When requested by either of the parties, a family law master shall provide a duplicate copy of the tape or other electronic recording medium of each hearing held. For evidentiary purposes, a duplicate of such electronic recording prepared by the secretary-clerk shall be a "writing" or "recording" as those terms are defined in rule 1001 of the West Virginia rules of evidence, and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule. The party requesting the copy shall pay to the family law master an amount equal to the actual cost of the tape or other medium or the sum of five dollars, whichever is greater. Unless otherwise ordered by the court, the
preparation of a transcript and the payment of the cost thereof shall be the responsibility of the party requesting the transcript.

(f) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for recommending an order in accordance with section thirteen of this article, and on payment of lawfully prescribed costs, shall be made available to the parties. When a family law master's final recommended order rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

(g) After a temporary parenting plan has been agreed to by the parties or ordered by the family law master, or after a temporary support order has been entered by the court, a scheduled final evidentiary hearing cannot be continued without the agreement of the parties or without a review of the temporary parenting plan and the temporary support order.

(h) In any case in which a party has filed an affidavit that he or she is financially unable to pay the fees or costs, the family law master shall determine whether either party is financially able to pay such fees and costs based on the information set forth in the affidavit or on any evidence submitted at the hearing. If the family law master determines that either party is financially able to pay the fees and costs, the family law master shall assess the payment of such fees and costs accordingly as part of a recommended order. The provisions of this subsection do not alter or diminish the provisions of section one, article two, chapter fifty-nine of this code.

§48A-4-20. Circuit court review of family law master’s recommended order.

(a) The circuit court shall proceed to a review of the recommended order of the family law 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 family law master.

(c) The circuit court shall examine the recommended order of the family law master, along with the findings and conclusions of the family law 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. The circuit court shall 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 family law master's recommended order is deficient as to matters which
might be affected by evidence not considered or inadequately
developed in the family law master’s recommended order, the
court may recommit the recommended order to the family law
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 family
law 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.

§48A-4-23. Family court fund.

The office and the clerks of the circuit courts shall, on or
before the tenth day of each month, transmit all fees and costs
received for the services of the office under this chapter to the
state treasurer for deposit in the state treasury to the credit of a
special revenue fund to be known as the “family court fund”,
which is hereby created. All moneys collected and received
under this chapter and paid into the state treasury and credited
to the “family court fund” shall be used by the administrative
office of the supreme court of appeals solely for paying the
costs associated with the duties imposed upon the family law
masters under the provisions of this chapter which require
activities by the family law masters which are not subject to
being matched with federal funds or subject to reimbursement
by the federal government. Such moneys shall not be treated by
the auditor and treasurer as part of the general revenue of the
state.
CHAPTER 51. COURTS AND THEIR OFFICERS.

Article
2A. Circuit Courts; Family Court Division.

ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.

§51-2A-1. Family court division established in circuit court; designation of division.
§51-2A-2. Appointment of commissioners to be designated as family law masters; administrative and judicial functions of family law master.
§51-2A-3. Assignment of family law masters by family court circuits,
§51-2A-4. Qualifications of family law masters.
§51-2A-5. Term of office of family law master; elections.
§51-2A-6a. Terms of family law masters continued.
§51-2A-7. Procedure for removal, suspension or discipline of family law master; appeal; grounds.
§51-2A-10. Matters to be heard by a family law master.
§51-2A-12. Effects of certain repealers or reenactments.

§51-2A-1. Family court division established in circuit court; designation of division.

1 There is hereby created in the circuit court of each county in this state, a division of the circuit court to be designated as "The Family Court of ______ County, West Virginia".

§51-2A-2. Appointment of commissioners to be designated as family law masters; administrative and judicial functions of family law master.

1 (a) In each of the family court circuits, family law masters shall be appointed as follows:
3 (1) If a family law master serves a single judicial circuit that has one circuit judge, the circuit judge shall appoint the family law master;
6 (2) If a family law master serves a single judicial circuit that has two or more circuit court judges, the chief judge of the circuit shall appoint the family law master or masters;
(3) If a family law master serves more than one judicial circuit, the chief judges of the judicial circuits shall appoint the family law master or masters;

(4) If the chief judge or chief judges of the judicial circuits cannot agree, all of the circuit judges of the affected judicial circuits shall appoint the family law master or masters; or

(5) If the circuit judges of the affected judicial circuits cannot agree, the supreme court of appeals shall appoint the family law master or masters.

(b) A commissioner appointed under subsection (a) of this section may be designated by the name “family law master”.

(c) The family law master will conduct hearings in family court cases, take testimony, hear the parties, enter orders of a temporary or interlocutory nature, make findings of fact and conclusions of law on the record, formulate recommendations, and report to the circuit court. The family law master will exercise any other power or authority provided for in this article or article four, chapter forty-eight-a of this code.

(d) The family law master, as a commissioner of the circuit court, has both administrative and judicial functions to perform, as described in subsections (e) and (f) of this section.

(e) The family law master has responsibility for the administration of the family court division of the circuit court. A circuit court judge or judges whose circuit is served by a family law master or masters must monitor the administration of the family court divisions within the judicial circuit and regulate those activities, including naming one or more circuit judges to serve as administrative supervisor of the family law master, through appropriate administrative orders. The administrative orders of the administrative supervisor regarding a family court division will be compiled and indexed in the office of the circuit clerk and be available for public inspection.

(f) In exercising the judicial function of the family court, the family law master, free of direct oversight by a circuit
judge, is responsible for the preparation or preliminary consideration of issues requiring judicial decision, subject only to a subsequent review by a circuit judge. Conclusions of law of the family law master are subject to de novo review by the circuit court. In reviewing the findings of fact of a family law master, the circuit court is held to the clearly erroneous standard.

(g) A family law master shall not be eligible to participate in the judges retirement system under the provisions of article nine of this chapter.

(h) Beginning the first day of January, two thousand, each family law master is required to file a quarterly activity report with the supreme court of appeals and the joint committee on government and finance. The report shall include, but is not limited to, the number of cases heard before the family law master, the date the case was heard, the date the case was filed and the number and types of hearings held before the family law master in a particular case.

(i) The supreme court of appeals shall promulgate a procedural rule to establish time-keeping requirements for family law masters, family case coordinators and secretary-clerks of family law masters so as to assure the maximum funding of incentive payments, grants and other funding sources available to the state for the processing of cases filed for the location of absent parents, the establishment of paternity and the establishment, modification, and enforcement of child support orders.

§51-2A-3. Assignment of family law masters by family court circuits.

(a) A total of thirty-three family law masters will serve throughout the state. The state will be divided into twenty-four family court circuits with the number of family law masters allocated as follows:

The counties of Brooke, Hancock and Ohio shall constitute the first family court circuit and shall have two family law masters; the counties of Marshall, Wetzel and Tyler shall
constitute the second family court circuit and shall have one
family law master; the counties of Pleasants, Wood, Wirt,
Ritchie and Doddridge shall constitute the third family court
circuit and shall have two family law masters; the counties of
Jackson, Roane, Calhoun and Gilmer shall constitute the fourth
family court circuit and shall have one family law master; the
counties of Mason and Putnam shall constitute the fifth family
court circuit and shall have one family law master; the county
of Cabell shall constitute the sixth family court circuit and shall
have two family law masters; the county of Wayne shall
constitute the seventh family court circuit and shall have one
family law master; the county of Mingo shall constitute the
eighth family court circuit and shall have one family law
master; the county of Logan shall constitute the ninth family
court circuit and shall have one family law master; the counties
of Lincoln and Boone shall constitute the tenth family court
circuit and shall have one family law master; the county of
Kanawha shall constitute the eleventh family court circuit and
shall have four family law masters; the counties of McDowell
and Mercer shall constitute the twelfth family court circuit and
shall have two family law masters; the counties of Raleigh and
Wyoming shall constitute the thirteenth family court circuit and
shall have two family law masters; the counties of Fayette and
Summers shall constitute the fourteenth family court circuit and
shall have one family law master; the counties of Greenbrier,
Monroe and Pocahontas shall constitute the fifteenth family
court circuit and shall have one family law master; the counties
of Clay, Nicholas and Webster shall constitute the sixteenth
family court circuit and shall have one family law master; the
counties of Braxton, Lewis and Upshur shall constitute the
seventeenth family court circuit and shall have one family law
master; the county of Harrison shall constitute the eighteenth
family court circuit and shall have one family law master; the
county of Marion shall constitute the nineteenth family court
circuit and shall have one family law master; the county of
Monongalia shall constitute the twentieth family court circuit
and shall have one family law master; the counties of Barbour,
Preston and Taylor shall constitute the twenty-first family court
circuit and shall have one family law master; the counties of Grant, Tucker and Randolph shall constitute the twenty-second family court circuit and shall have one family law master; the counties of Mineral, Hampshire, Hardy and Pendleton shall constitute the twenty-third family court circuit and shall have one family law master; and the counties of Berkeley, Jefferson and Morgan shall constitute the twenty-fourth family court circuit and shall have two family law masters.

(b) The chief justice of the supreme court of appeals may temporarily assign a family law master from one family court circuit to another family court circuit, as caseload, disqualification, recusal, vacation or illness may dictate. In each case of temporary assignment, the chief justice shall appoint only a family law master who is actually serving at the time of such appointment.

§ 51-2A-4. Qualifications of family law masters.

(a) An individual serving as a family law master prior to the initial election of family law masters, as set forth in section five of this article, must be a member in good standing of the West Virginia state bar and must have at least five years' experience as a practicing attorney prior to taking office. An individual elected as a family law master at the initial election of family law masters or at any subsequent election of family law masters, as set forth in section five of this article, or an individual appointed as a family law master at any time after the initial election of family law masters must be a member in good standing of the West Virginia state bar, must have at least five years' experience as a practicing attorney prior to taking office, and must, at the time he or she takes office, and thereafter during his or her continuance in office, be a resident of the state of West Virginia.

(b) Upon assuming his or her duties, a family law master with no prior experience as a family law master shall, as soon as is practicable, attend and complete a course of instruction in principles of family law and procedure that is given in accordance with the supervisory rules of the supreme court of
appeals. All family law masters shall attend courses of continuing educational instruction as may be required by supervisory rule of the supreme court of appeals. Failure to attend the required courses of continuing educational instruction without good cause constitutes neglect of duty. Persons attending such courses outside of the county of their residence will be reimbursed by the supreme court of appeals for expenses actually incurred in accordance with the supervisory rules of the supreme court of appeals.

(c) A family law master may not engage in any other business, occupation or employment inconsistent with the expeditious, proper and impartial performance of his or her duties as a judicial officer. A family law master is not permitted to engage in the outside practice of law and shall devote full time to his or her duties as a judicial officer.

§51-2A-5. Term of office of family law master; elections.

(a) Before the first day of September, one thousand nine hundred ninety-nine, family law masters shall be appointed to serve in the family court circuits as provided for in section three of this article. The initial term of office for the family law masters first appointed shall commence on the first day of October, one thousand nine hundred ninety-nine, and end on the thirty-first day of December, two thousand two.

(b) Beginning with the primary and general elections to be conducted in the year two thousand two, family law masters shall be elected. In family court circuits having two or more family law masters there shall be, for election purposes, numbered divisions corresponding to the number of family law masters in each area. Each family law master shall be elected at large by the entire family court area. In each numbered division of a judicial circuit, the candidates for nomination or election shall be voted upon and the votes cast for the candidates in each division shall be tallied separately from the votes cast for candidates in other numbered divisions within the family court area. The candidate or candidates receiving the highest number
of the votes cast within a numbered division shall be nominated
or elected, as the case may be.

(c) The term of office for all family law masters elected in
two thousand two shall be for four years, commencing on the
first day of January, two thousand three, and ending on the
thirty-first day of December, two thousand six. Subsequent
terms of office for family law masters elected thereafter shall be
for four years.


If a vacancy occurs in the office of family law master, the
chief judge or judges of the affected circuit courts, as the case
may be, shall, within thirty days after the vacancy occurs, fill
the vacancy by appointment for the unexpired term. If the chief
judge or judges of the affected circuit court fail to act timely to
fill a vacancy, the chief justice of the supreme court of appeals
may fill the vacancy for the unexpired term.

§51-2A-6a. Terms of family law masters continued.

The family law masters holding office on the first day of
June, one thousand nine hundred ninety-nine, by virtue of
appointments made under the prior enactments of article four,
chapter forty-eight-a of this code are continued in their term of
office through the thirtieth day of September, one thousand nine
hundred ninety-nine.

§51-2A-7. Procedure for removal, suspension or discipline of
family law master; appeal; grounds.

(a) A family law master appointed pursuant to section two
of this article may be removed from office in the manner
provided in this section for official misconduct, malfeasance in
office, incompetence, neglect of duty, gross immorality or
inability to serve.

(b) Charges may be preferred by:

(1) A circuit judge of a county that constitutes all or a part
of the family law master’s region;
(2) By the administrative director of the supreme court of appeals; or

(3) By any person as provided in rule two of the rules of judicial disciplinary procedure. If a formal charge is filed by the judicial investigation commission, such charge may recommend removal and the convening of a three-judge court as provided for in this section.

(c) The charges must be reduced to writing in the form of a petition, duly verified by the charging party, and filed with the supreme court of appeals. The petition must request the impaneling or convening of a three-judge court consisting of three circuit judges of the state. The chief justice of the supreme court of appeals shall, without delay, designate and appoint three circuit judges within the state, none of whom is from the region in which the family law master serves. In the order of appointment, the chief justice shall designate the date, time and place for the convening of the three-judge court. The date and time of hearing on the petition must be more than twenty days from the date of the filing of the petition.

The three-judge court shall, without a jury, hear the charges and all evidence offered in support thereof or in opposition thereto and upon satisfactory proof of the charges shall remove the family law master from office and place the records, papers and property of his or her office in the possession of some other officer or person for safekeeping or in the possession of the person appointed as hereinafter provided to fill the office temporarily. Final orders shall set out the court’s decision to dismiss the charges or to suspend or remove the family law master, with or without recommendations to refer the matter for investigation by the office of disciplinary counsel under the rules of judicial disciplinary procedure, or to provide other disposition appropriate to the case.

(d) An appeal from a final order of a three-judge court removing or refusing to remove a family law master from office pursuant to this section may be taken to the supreme court of appeals within thirty days from the date of entry of the order
from which the appeal is to be taken. The supreme court of
appeals shall consider and decide the appeal upon the original
papers and documents, without requiring the same to be printed
and shall enforce its findings by proper writ. From the date of
any order of the three-judge court removing an officer under
this section until the expiration of thirty days thereafter, and, if
an appeal be taken, until the date of suspension of such order,
if suspended by the three-judge court and if not suspended, until
the final adjudication of the matter by the supreme court of
appeals, the circuit court judge or judges having power to fill a
vacancy in such office may fill the same by a temporary
appointment until a final decision of the matter, and if a final
decision is made by the supreme court of appeals affirming the
removal of the family law master, shall fill the vacancy in the
manner provided by law for such office.

(e) For purposes of subsections (a) through (d), inclusive,
of this section, "neglect of duty" includes, but is not limited to,
failure to make findings of fact and conclusions of law either on
the record or in writing to be filed as part of the record.

(f) Notwithstanding any other provision, the conduct of
family law masters who begin serving terms of office on the
first day of January, two thousand three, and thereafter, shall be
governed by the code of judicial conduct adopted by the
supreme court of appeals and any complaint of violation of the
code of judicial conduct against a family law judge shall be
filed and considered in accordance with the rules of judicial
disciplinary procedure adopted by the supreme court of appeals.

§51-2A-8. Compensation and expenses of family law masters and
their staffs.

(a) Beginning the first day of October, one thousand nine
hundred ninety-nine, until the thirty-first day of December, two
thousand two, a family law master is entitled to receive as
compensation for his or her services an annual salary of sixty
thousand dollars. Beginning the first day of January, two
thousand three, a family law master is entitled to receive as
compensation for his or her services, an annual salary of sixty-two thousand five hundred dollars.

(b) The secretary-clerk of the family law master is appointed by the family law master and serves at his or her will and pleasure. The secretary-clerk of the family law master is entitled to receive an annual salary of twenty-two thousand three hundred eight dollars. In addition, beginning the first day of October, one thousand nine hundred ninety-nine, any secretary-clerk who is employed by a family law master on the effective date of this section who has been so employed for at least two years prior to such effective date, shall receive an additional five hundred dollars per year up to ten years of such prior employment. Further, the secretary-clerk will receive such percentage or proportional salary increases as may be provided for by general law for other public employees and is entitled to receive the annual incremental salary increase as provided for in article five, chapter five of this code.

(c) After the first day of October, one thousand nine hundred ninety-nine, the family law master may employ not more than one family case coordinator who serves at his or her will and pleasure: Provided, That for purposes of the initial employment of family case coordinators, the administrative director of the supreme court of appeals shall designate twenty family law masters who are authorized to employ family case coordinators, and the additional thirteen family case coordinators may only be employed when authorized by the administrative director of the supreme court of appeals. The annual salary of the family case coordinator of the family law master shall be established by the administrative director of the supreme court of appeals but may not exceed thirty-five thousand dollars. The family case coordinator will receive such percentage or proportional salary increases as may be provided for by general law for other public employees and is entitled to receive the annual incremental salary increase as provided for in article five, chapter five of this code.
(d) Subject to the approval of the chief judge of the circuit, the sheriff or his or her designated deputy, shall serve as a bailiff for a family law master. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family law master determines the same is necessary for the orderly and efficient conduct of the business of the family court division of the circuit court.

(e) A special commissioner of the court appointed pursuant to subdivision (4), subsection (a), section ten of this article is entitled to 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.

(f) Disbursement of salaries for family law masters and members of their staffs are made by or pursuant to the order of the director of the administrative office of the supreme court of appeals.

(g) Family law masters, members of their staffs and special commissioners of the court are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will 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.


(a) Pleading, practice and procedure in matters before a family law master are governed by rules of practice and procedure for family law promulgated by the supreme court of appeals pursuant to section four, article one of this chapter.

(b) The West Virginia rules of evidence apply to proceedings before a family law master.
(c) The chief judge of a circuit court may promulgate local administrative rules governing the conduct and administration of family courts serving the circuit court. Local administrative rules are subordinate and subject to the rules of the supreme court of appeals or the orders of the chief justice. Rules promulgated by the chief judge of a circuit court are made by order entered upon the order book of the circuit court, and are effective when filed with the clerk of the supreme court of appeals.

§51-2A-10. Matters to be heard by a family law master.

(a) A chief judge of a circuit court shall refer to the family law master the following matters for hearing:

(1) Actions to obtain orders of support brought under the provisions of section one, article five, chapter forty-eight-a of this code;

(2) All actions to establish paternity brought under the provisions of article six, chapter forty-eight-a of this code, and any dependent claims related to such action regarding child support, custody and visitation;

(3) All petitions for writs of habeas corpus wherein the issue contested is child custody;

(4) All motions for temporary relief affecting child custody, visitation, child support, spousal support or domestic or family violence, wherein either party has requested such referral or the court on its own motion in individual cases or by general order has referred such motions to the family law master: Provided, That if the family law master determines, in his or her discretion, that the pleadings raise substantial issues concerning the identification of separate property or the division of marital property which may have a bearing on an award of support, the family law master shall notify the appropriate circuit court of this fact and the circuit court may refer the case to a special commissioner chosen by the circuit court to serve in such capacity;
(5) All petitions for modification of an order involving child custody, child visitation, child support or spousal support;

(6) All actions for divorce, annulment or separate maintenance brought pursuant to article two, chapter forty-eight of this code: Provided, That an action for divorce, annulment or separate maintenance which does not involve child custody or child support shall be heard by a circuit judge if, at the time of the filing of the action, the parties file a written property settlement agreement which has been signed by both parties;

(7) All actions wherein an obligor is contesting the enforcement of an order of support through the withholding from income of amounts payable as support or is contesting an affidavit of accrued support, filed with a circuit clerk, which seeks to collect arrearage;

(8) All actions commenced under chapter forty-eight-b of this code or the interstate family support act of another state;

(9) Proceedings for the enforcement of support, custody or visitation orders;

(10) All actions to establish custody of a minor child or visitation with a minor child, including actions brought pursuant to the uniform child custody jurisdiction act and actions brought to establish grandparent visitation: Provided, That any action instituted under article six, chapter forty-nine of this code shall be heard by a circuit judge;

(11) On and after the first day of October, one thousand nine hundred ninety-nine, civil contempt and direct contempts: Provided, That criminal contempts must be heard by a circuit judge; and

(12) On and after the first day of April, two thousand one, full hearings in domestic or family violence proceedings wherein a protective order is sought.

(b) On its own motion or upon motion of a party, the circuit court may revoke the referral of a particular matter to a family law master if the family law master is recused, if the matter is
uncontested, or for other good cause, or if the matter will be more expeditiously and inexpensively heard by a circuit judge without substantially affecting the rights of parties.


(a) A family law master, acting in his or her capacity as a commissioner of the circuit court, may:

(1) Sanction persons through civil contempt proceedings when necessary to preserve and enforce the rights of private parties or to administer remedies granted by the court;

(2) Regulate all proceedings in a hearing before the family law master; and

(3) Punish direct contempts that are offered in the presence of the court or that obstruct or corrupt the proceedings of the court.

(b) A family law master may enforce compliance with his or her lawful orders with remedial or coercive sanctions designed to compensate a complainant for losses sustained and to coerce obedience for the benefit of the complainant. Sanctions must give the contemnor an opportunity to purge himself or herself. In selecting sanctions, the court must use the least possible power adequate to the end proposed. A person who lacks the present ability to comply with the order of the court may not be confined for a civil contempt. Sanctions may include, but are not limited to, seizure or impoundment of property to secure compliance with a prior order. Ancillary relief may provide for an award of attorney's fees.

§51-2A-12. Effects of certain repealers or reenactments.

The repeal or reenactment of sections in article four, chapter forty-eight of this code effected during the second extraordinary session of the Legislature, one thousand nine hundred ninety-nine, become operable on the first day of July, one thousand nine hundred ninety-nine. It is intended that the family law master system in existence on the eighteenth day of May, one thousand nine hundred ninety-nine, will continue to
function under the prior enactment of article four, chapter forty-
eight-a of this code, notwithstanding the repeal or the amend-
ment and reenactment of sections of that article, until the first
day of October, one thousand nine hundred ninety-nine, when
the family law master system is replaced with the system of
family law masters provided for in this article.

ARTICLE 3. COURTS IN GENERAL.

§51-3-14. Court security fund.

(a) The offices and the clerks of the magistrate courts and
the circuit courts shall, on or before the tenth day of each
month, transmit all fees and costs received for the court security
fund in accordance with the provisions of sections one and two,
article three, chapter fifty of this code and section eleven,
article one, chapter fifty-nine of this code for deposit in the
state treasury to the credit of a special revenue fund to be
known as the “court security fund”, which is hereby created
under the department of military affairs and public safety. The
court security fund may receive any gifts, grants, contributions
or other money from any source which is specifically desig-
nated for deposit in the fund. All moneys collected and received
and paid into the state treasury and credited to the court security
fund shall be expended by the board exclusively to implement
the improvement measures agreed upon in accordance with the
security plans submitted pursuant to section sixteen of this
article and in accordance with an appropriation by the Legisla-
ture. Amounts collected which are found from time to time to
exceed the funds needed for the purposes set forth in this article
may be transferred to other accounts or funds and redesignated
for other purposes upon appropriation by the Legislature.

(b) Notwithstanding any provision of this code to the
contrary, during fiscal year two thousand, all fees and costs
received for the court security fund in accordance with the
provisions of sections one and two, article three, chapter fifty
of this code, section eleven, article one, chapter fifty-nine of
this code, and any other provision of this code, for deposit in
the state treasury to the credit of the court security fund shall
not be deposited in the court security fund, but shall instead be
transmitted by the offices and the clerks of the magistrate courts
and the circuit courts, on or before the tenth day of each month,
for deposit in the state treasury to the credit of the family court
fund established under section twenty-three, article four,
chapter forty-eight-a of this code. The fees and costs that are
deposited in the family court fund under the provisions of this
subsection shall be expended for the purposes set forth in said
section twenty-three.

(c) Notwithstanding any provision of this code to the
contrary, after the thirtieth day of June, two thousand, the court
security board shall transfer such amounts from the court
security fund as may from time to time be directed by the
Legislature in an appropriation act to the domestic violence
legal services fund created in section four-c, article two-c,
chapter forty-eight of this code. Any moneys transferred to the
domestic violence legal services fund pursuant to the provisions
of this section shall be expended for the purposes specified in
said section four-c.

CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.

Article
1. Fees and Allowances.
2. Costs Generally.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.
§59-1-28a. Disposition of filing fees in divorce and other civil actions and fees for
services in criminal cases.

§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for
services rendered as such clerk the following fees, and such
fees shall be paid in advance by the parties for whom such
services are to be rendered:

(1) For instituting any civil action under the rules of civil
procedure, any statutory summary proceeding, any extraordi-
nary remedy, the docketing of civil appeals, or any other action, cause, suit or proceeding, seventy-five dollars: Provided, That the fee for instituting an action for divorce shall be one hundred five dollars;

(2) Beginning on and after the first day of July, one thousand nine hundred ninety-nine, for instituting an action for divorce, separate maintenance or annulment, one hundred twenty-five dollars; and

(3) For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, seventy-five dollars.

(b) In addition to the foregoing fees, the following fees shall likewise be charged and collected:

(1) For preparing an abstract of judgment, five dollars;

(2) For any transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, fifty cents;

(3) For action on suggestion, ten dollars;

(4) For issuing an execution, ten dollars;

(5) For issuing or renewing a suggestee execution, including copies, postage, registered or certified mail fees and the fee provided by section four, article five-a, chapter thirty-eight of this code, three dollars;

(6) For vacation or modification of a suggestee execution, one dollar;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate’s court, three dollars;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, five dollars;

(9) For postage and express and for sending or receiving decrees, orders or records, by mail or express, three times the amount of the postage or express charges;
(10) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, fifty cents; and

(11) For additional service (plaintiff or appellant) where any case remains on the docket longer than three years, for each additional year or part year, twenty dollars.

(c) The clerk shall tax the following fees for services in any criminal case against any defendant convicted in such court:

(1) In the case of any misdemeanor, fifty-five dollars; and

(2) In the case of any felony, sixty-five dollars.

(d) No such clerk shall be required to handle or accept for disbursement any fees, cost or amounts, of any other officer or party not payable into the county treasury, except it be on order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

§59-1-28a. Disposition of filing fees in divorce and other civil actions and fees for services in criminal cases.

(a) Except for those payments to be made from amounts equaling filing fees received for the institution of divorce actions as prescribed in subsection (b) of this section, and except for those payments to be made from amounts equaling filing fees received for the institution of actions for divorce, separate maintenance and annulment as prescribed in subsection (c) of this section, for each civil action instituted under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit or proceeding in the circuit court, the clerk of the court shall, at the end of each month, pay into the funds or accounts described in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting such action as follows:

(1) Into the regional jail and correctional facility development fund in the state treasury established pursuant to the
provisions of section ten, article twenty, chapter thirty-one of this code, the amount of sixty dollars; and

(2) Into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

(b) For each divorce action instituted in the circuit court, the clerk of the court shall, at the end of each month, pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting such divorce action as follows:

(1) Into the regional jail and correctional facility development fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of ten dollars;

(2) Into the special revenue account of the state treasury, established pursuant to section twenty-four, article one, chapter forty-eight of this code, an amount of thirty dollars;

(3) Into the family court fund established under section twenty-three, article four, chapter forty-eight-a of this code, an amount of fifty dollars; and

(4) Into the court security fund in the state treasury, established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

(c) This subsection applies to filing fees paid after the thirtieth day of June, one thousand nine hundred ninety-nine. For each action for divorce, separate maintenance or annulment instituted in the circuit court, the clerk of the court shall, at the end of each month, pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting such divorce action as follows:

(1) Into the regional jail and correctional facility development fund in the state treasury established pursuant to the...
provisions of section ten, article twenty, chapter thirty-one of this code, the amount of ten dollars;

(2) Into the special revenue account of the state treasury, established pursuant to section twenty-four, article one, chapter forty-eight of this code, an amount of thirty dollars;

(3) Into the family court fund established under section twenty-three, article four, chapter forty-eight-a of this code, an amount of seventy dollars; and

(4) Into the court security fund in the state treasury, established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

(d) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary, the clerk of the court shall, at the end of each month, pay into the family court fund established under section twenty-three, article four, chapter forty-eight-a of this code an amount equal to the amount of every fee received for petitioning for the modification of an order involving child custody, child visitation, child support or spousal support as determined by subdivision (3), subsection (a), section eleven of this article.

(e) The clerk of the court from which a protective order is issued shall, at the end of each month, pay into the family court fund established under section twenty-three, article four, chapter forty-eight-a of this code an amount equal to every fee received pursuant to the provisions of subsection (k), section six, article two-a, chapter forty-eight of this code.

(f) The clerk of each circuit court shall, at the end of each month, pay into the regional jail and prison development fund in the state treasury an amount equal to forty dollars of every fee for service received in any criminal case against any defendant convicted in such court and shall pay an amount equal to five dollars of every such fee into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code.
ARTICLE 2. COSTS GENERALLY.

§59-2-1. Suits by persons financially unable to pay.

(a) A natural person who is financially unable to pay the fees or costs attendant to the commencement, prosecution or defense of any civil action or proceeding, or an appeal therein, is permitted to proceed without prepayment in any court of this state, after filing with the court an affidavit that he or she is financially unable to pay the fees or costs or give security therefor.

(1) The clerk of the court and all other officers of the court shall issue and serve all process and perform all duties in such cases.

(2) Judgment may be rendered for costs at the conclusion of the action, where otherwise authorized by law, and be taxable against a losing party who has not been determined to be financially unable to pay.

(3) Upon the filing of an affidavit in accordance with this subsection, seeking an appeal in a civil case from a circuit court to the supreme court of appeals, the supreme court of appeals may direct payment by the administrative office of the supreme court of appeals of the expenses of duplicating the record on appeal after it is transmitted by the clerk of the circuit court. The transcript of proceedings before the circuit court, if the petition for appeal is to be filed with the transcript, shall be provided by the court reporter without cost: Provided, That actual expenses of the court reporter for supplies used in preparing the transcript may be paid when authorized by the director of the administrative office of the supreme court of appeals.

(b) The supreme court of appeals or the chief justice thereof shall establish and periodically review and update financial guidelines for determining the eligibility of civil litigants to proceed in forma pauperis.

(c) The supreme court of appeals shall adopt a financial affidavit form for use by persons seeking a waiver of fees, costs
or security pursuant to the provisions of this section. Copies of the form shall be available to the public in the offices of the clerk of any court of this state. The affidavit shall state the nature of the action, defense or appeal and the affiant's belief that he or she is entitled to redress. The form shall elicit information from the affiant which will enable the court in which it is filed to consider the following factors in determining whether the affiant is financially unable to pay fees, costs or security:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid assets, assets which may provide collateral to obtain funds and other assets which may be liquidated to provide funds to pay fees, costs or security;

(3) Fixed debts and obligations, including federal, state and local taxes and medical expenses;

(4) Child care, transportation and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) Whether the person has paid or will pay counsel fees, or whether counsel will be provided by a private attorney on a contingent fee basis, an attorney pro bono, a legal services attorney, or some other attorney at no cost or a reduced cost to the affiant; and

(7) The consequences for the individual if a waiver of fees, costs or security is denied.

(d) When the information set forth in the affidavit or the evidence submitted in the action reveals that the person filing the affidavit is financially able to pay the fees and costs, the court or the family law master shall order the person to pay the fees and costs in the action.
(e) No other party in any proceeding may initiate an inquiry by motion or other pleading or participate in any proceeding relevant to the issues raised pursuant to this section.

(f) The making of an affidavit subject to inquiry under this section does not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered and the recovery of the value of services, if any, provided pursuant to this section. A person who has made an affidavit knowing the contents thereof to be false may be prosecuted for false swearing as provided by law.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to provide support to a minor; penalties.

(1) A person who: (a) Persistently fails to provide support which he or she can reasonably provide and which he or she knows he or she has a duty to provide to a minor; or (b) is subject to court order to pay any amount for the support of a minor child and is delinquent in meeting the full obligation established by the order and has been delinquent for a period of at least six months' duration, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in the county or regional jail for not more than one year, or both fined and confined.

(2) A person who persistently fails to provide support which he or she can reasonably provide and which he or she knows he or she has a duty to provide to a minor by virtue of a court or administrative order and the failure results in: (a) An arrearage of not less than eight thousand dollars; or (b) twelve consecutive months without payment of support, is guilty of a felony and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or
imprisoned for not less than one year nor more than three years, or both fined and imprisoned.

(3) In a prosecution under this section, the defendant’s alleged inability to reasonably provide the required support may be raised only as an affirmative defense, after reasonable notice to the state.

CHAPTER 11

(H.B. 202 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed May 20, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compensation of the state superintendent of schools.

Be it enacted by the Legislature of West Virginia:

That section one, article three, 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 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence.

There shall be appointed by the state board a state superintendent of schools. He or she shall be a person of good moral character, of recognized ability as a school administrator, holding at least a master’s degree in educational administration, and shall have had not less than five years of experience in public school work. He or she shall receive an annual salary set by the state board, to be paid monthly: Provided, That the annual salary may not exceed one hundred forty-six thousand dollars. The state superintendent shall also receive
necessary traveling expenses incident to the performance of his or her duties, the traveling expenses to be paid out of the general school fund upon warrants of the state auditor. The superintendent shall have his or her office at the state capital. The state board shall report to the legislative oversight commission on education accountability upon request concerning its progress during any hiring process for a state superintendent.
AN ACT making a supplementary appropriation of public money out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor's office - civil contingent fund, fund 0105, fiscal year 2000, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated August 17, 1999, setting forth therein the cash balance as of July 1, 1999, and further included the estimate of revenues for the fiscal year 2000, less net appropriation
balances forwarded and regular appropriations for the fiscal year 2000; and

WHEREAS, It appears from the governor’s statement there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand, to fund 0105, fiscal year 2000, organization 0100, be supplemented and amended by increasing the total appropriation by fourteen million five hundred fifty thousand dollars in an existing line item as follows:

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<tr>
<th>Title</th>
<th>Section</th>
<th>Appropriations from general revenue.</th>
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The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand, by adding fourteen million five hundred fifty thousand dollars to the existing appropriation for Civil Contingent Fund—Total for expenditure during the fiscal year two thousand.
# DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

**Regular Session, 1999**

## HOUSE BILLS

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Regular Session, 1999

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