ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1990
First and Second Extraordinary Sessions, 1990
FOREWORD


Second Regular Session, 1990

The Second Regular Session of the 69th Legislature convened on January 10, 1990. The constitutional sixty-day limit on the duration of the session was midnight, March 10, 1990. However, the session was extended by Proclamation of the Governor for the sole consideration of the Budget Bill, and the Legislature adjourned its Regular Session sine die on March 14, 1990.

Bills totaling 1,717 were introduced in the two houses during this session (1,092 House and 625 Senate). The Legislature passed 200 bills, 120 House and 80 Senate. The Governor vetoed one House bill (H. B. 4692), two Senate bills (S. B. 78 and Com. Sub. for S. B. 311) and one bill (Com. Sub. for H. B. 4456) became law without the Governor's signature, leaving a net total of 197 bills which became law.

One hundred concurrent resolutions were introduced during the session, 54 House and 46 Senate, of which 17 House and 12 Senate were adopted. Thirty-two House Joint and 15 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. Com. Sub. for H. J. R. 109, Local Government Fiscal Responsibility Amendment, was reported from committee but died on the House calendar. No Joint Resolutions were adopted. The House had 26 House Resolutions and the Senate had 36 Senate Resolutions, of which 13 House and 34 Senate were adopted.

The Senate failed to pass 86 House bills passed by the House and 64 Senate bills failed passage by the House. One House bill, Com. Sub. for H. B. 2278, permitting employees of school districts to be eligible for membership on county boards of education in certain instances, was rejected by the Senate. Five House and four Senate bills died in conference.

First Extraordinary Session, 1990

The First Extraordinary Session convened at 9:45 p.m., on
March 14, 1990, and adjourned sine die at 8:53 p.m., on March 15, 1990.

The Proclamation convening the session contained two items for consideration during the session.

Two House bills and two Senate bills were introduced, of which two House bills passed and were approved by the Governor.

The Senate introduced and adopted eight Senate Resolutions. The House introduced and adopted one House Resolution, providing for payment of expenses of the session and one House Concurrent Resolution, directing the Joint Committee on Government and Finance to study the issues of personnel in the public education system.

Second Extraordinary Session, 1990

The Legislature met in its Second Extraordinary Session at 5:00 p.m., on June 22, 1990, and adjourned sine die at 1:40 p.m. on June 27, 1990.

The Legislature was called together for the purpose of considering thirteen items: Workers' Compensation, Public Energy Authority, disclosure of certain tax information, establishment of a special advance payment account for the WIC Program, supplemental appropriation for WIC Program, child support statute revisions, Homestead Property Tax Exemption, Public Employees Retirement revision concerning nonremunerative governmental positions, solicitation of charitable funds, salary increase for public employees, funding of PEIA, salary increase for education employees and establishing a Disaster Recovery Council and Trust Fund.

The Legislature passed, and the Governor approved, twelve bills: Six House bills and six Senate bills.

Com. Sub. for H. B. 203, Disclosure of certain taxpayer information, passed the House, but the Senate rejected the Conference Report thereon. One House bill (H. B. 207, supplemental appropriation to PEIA, Acct. No. 6150) failed passage by the Senate.

The Senate introduced and adopted two Senate Concurrent
Resolutions and six Senate Resolutions. The House introduced and adopted two House Resolutions and three House Concurrent Resolutions.

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

These Acts may be purchased from the Division of Purchasing, Department of Administration, State Capitol, Charleston, West Virginia 25305.

DONALD L. KOPP,
Clerk of the House and
Keeper of the Rolls.
# TABLE OF CONTENTS

## ACTS AND RESOLUTIONS

Regular Session, 1990  
First & Second Extraordinary Sessions, 1990

### GENERAL LAWS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>When Loans or Lines of Credit Not Binding</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Reorganization of the Department of Administration</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>Requirements of Applicant for Public Market Permit</td>
<td>112</td>
</tr>
<tr>
<td>4</td>
<td>Compensation of Cooperative Extension Service Employees</td>
<td>114</td>
</tr>
<tr>
<td>5</td>
<td>Additional Definition of Dealer</td>
<td>116</td>
</tr>
<tr>
<td>6</td>
<td>Agricultural Liming Materials Law</td>
<td>120</td>
</tr>
<tr>
<td>7</td>
<td>Pesticide Control Act of 1990</td>
<td>128</td>
</tr>
<tr>
<td>8</td>
<td>Use of Operating Fees and Penalties for Paying Commission Salaries and Expenses</td>
<td>161</td>
</tr>
<tr>
<td>9</td>
<td>Authorizing the Private Sale of Alcoholic Liquor</td>
<td>167</td>
</tr>
<tr>
<td>10</td>
<td>Budget Bill, Making Appropriations for Fiscal Year Beginning</td>
<td>194</td>
</tr>
<tr>
<td></td>
<td>July 1, 1990</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Supplemental</strong></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Transfer of Funds, Acct. No. 1030, Joint Expenses, to Acct. No. 4050-21, Medical Services</td>
<td>275</td>
</tr>
<tr>
<td>12</td>
<td>Expiring and Transferring Certain Unexpended Funds</td>
<td>276</td>
</tr>
<tr>
<td>13</td>
<td>Tax Division, Acct. No. 1800</td>
<td>278</td>
</tr>
<tr>
<td>14</td>
<td>Commission on Aging, Acct. No. 4060</td>
<td>279</td>
</tr>
<tr>
<td>15</td>
<td>Nonintoxicating Beer Commissioner, Acct. No. 4900</td>
<td>280</td>
</tr>
<tr>
<td>16</td>
<td>Racing Commission, Acct. No. 4950</td>
<td>281</td>
</tr>
</tbody>
</table>

[vii]
# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>APPROPRIATIONS—(Continued)</strong></td>
<td></td>
</tr>
<tr>
<td>Supplement—(Continued)</td>
<td></td>
</tr>
<tr>
<td>17. Division of Personnel of the Civil Service System and the Civil</td>
<td>282</td>
</tr>
<tr>
<td>Service Commission</td>
<td></td>
</tr>
<tr>
<td>18. Division of Highways, Acct. No. 6700</td>
<td>283</td>
</tr>
<tr>
<td>19. Division of Motor Vehicles, Acct. No. 6710</td>
<td>285</td>
</tr>
<tr>
<td>20. Expiring and Transferring Unexpended Amounts from</td>
<td>287</td>
</tr>
<tr>
<td>Numerous State Agency Accounts to the Division of Human</td>
<td></td>
</tr>
<tr>
<td>Services</td>
<td></td>
</tr>
<tr>
<td>21. Information System Services Division, Acct. No. 8151</td>
<td>293</td>
</tr>
<tr>
<td>22. Division of Public Safety, Drunk Driving Prevention Fund</td>
<td>294</td>
</tr>
<tr>
<td>23. Division of Health—Hospital Services Revenue Account</td>
<td>295</td>
</tr>
<tr>
<td><strong>ARCHITECT-ENGINEER SERVICES</strong></td>
<td></td>
</tr>
<tr>
<td>24. Procurement of Architect-Engineer Services</td>
<td>297</td>
</tr>
<tr>
<td><strong>ARCHIVES AND HISTORY</strong></td>
<td></td>
</tr>
<tr>
<td>25. Protection and Preservation of Historic Archaeological Sites and</td>
<td>300</td>
</tr>
<tr>
<td>Burial Grounds</td>
<td></td>
</tr>
<tr>
<td><strong>BANKS AND BANKING</strong></td>
<td></td>
</tr>
<tr>
<td>26. Reporting of State Assets Held to Secretary and State Treasurer</td>
<td>312</td>
</tr>
<tr>
<td>27. Bank Assets Permitted to Qualify as a Member of the Board of</td>
<td>313</td>
</tr>
<tr>
<td>Banking and Financial Institutions</td>
<td></td>
</tr>
<tr>
<td>28. Capital Stock and Capital Surplus Requirement for a Banking</td>
<td>316</td>
</tr>
<tr>
<td>Institution to Incorporate</td>
<td></td>
</tr>
<tr>
<td>29. Prohibiting Furnishing Information By Financial Institutions to</td>
<td>323</td>
</tr>
<tr>
<td>Other Financial Institutions Concerning Employee's Known</td>
<td></td>
</tr>
<tr>
<td>Violation of Banking Laws</td>
<td></td>
</tr>
<tr>
<td>30. Funds Transfer</td>
<td>324</td>
</tr>
<tr>
<td><strong>BEER</strong></td>
<td></td>
</tr>
<tr>
<td>31. Manufacture, Sale, Distribution, Transportation, Storage and</td>
<td>361</td>
</tr>
<tr>
<td>Consumption of Nonintoxicating Beer</td>
<td></td>
</tr>
<tr>
<td><strong>BIDS</strong></td>
<td></td>
</tr>
<tr>
<td>32. Selection by County Boards of Education of Bidders from Whom</td>
<td>369</td>
</tr>
<tr>
<td>School Buses are Purchased</td>
<td></td>
</tr>
<tr>
<td><strong>BLENNERHASSETT PARK</strong></td>
<td></td>
</tr>
<tr>
<td>33. Regulatory Authority of Division of Commerce Over the Water</td>
<td>371</td>
</tr>
<tr>
<td>Transport of Visitors to Blennerhassett Island</td>
<td></td>
</tr>
<tr>
<td><strong>BOARD OF INVESTORS</strong></td>
<td></td>
</tr>
<tr>
<td>34. Prohibiting Attempts to Recover Overpayments Made from the</td>
<td>374</td>
</tr>
<tr>
<td>Consolidated Fund to Local Governments</td>
<td></td>
</tr>
<tr>
<td>35. Continuation of the West Virginia Board of Investments</td>
<td>376</td>
</tr>
<tr>
<td>Chapter</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
</tr>
<tr>
<td><strong>CABLE TELEVISION</strong></td>
<td></td>
</tr>
<tr>
<td>36. Regulation of Cable Television</td>
<td>376</td>
</tr>
<tr>
<td><strong>CAPITAL COMPANY ACT</strong></td>
<td></td>
</tr>
<tr>
<td>37. Definitions Under the Capital Company Act</td>
<td>405</td>
</tr>
<tr>
<td><strong>CAPITOL BUILDING COMMISSION</strong></td>
<td></td>
</tr>
<tr>
<td>38. Continuing the Capitol Building Commission</td>
<td>406</td>
</tr>
<tr>
<td><strong>CHILD ADVOCATE</strong></td>
<td></td>
</tr>
<tr>
<td>39. Continuing the Child Advocate Office</td>
<td>408</td>
</tr>
<tr>
<td><strong>CHILD SUPPORT</strong></td>
<td></td>
</tr>
<tr>
<td>40. General Revision of Law Governing</td>
<td>409</td>
</tr>
<tr>
<td><strong>CHILD WELFARE</strong></td>
<td></td>
</tr>
<tr>
<td>41. Purchase or Sale of Child Prohibited and Providing Penalties</td>
<td>476</td>
</tr>
<tr>
<td>42. Custody of Abused or Neglected Children During Emergency Situations</td>
<td>483</td>
</tr>
<tr>
<td><strong>CIVIL SERVICE</strong></td>
<td></td>
</tr>
<tr>
<td>43. Offices and Positions Exempt from Coverage Under Classified Service</td>
<td>487</td>
</tr>
<tr>
<td><strong>CLAIMS</strong></td>
<td></td>
</tr>
<tr>
<td>44. Claims Against the State</td>
<td>489</td>
</tr>
<tr>
<td>45. Claims for Compensation of Crime Victims</td>
<td>492</td>
</tr>
<tr>
<td>46. Claims Against Various State Agencies</td>
<td>493</td>
</tr>
<tr>
<td><strong>CONSUMER CREDIT AND PROTECTION</strong></td>
<td></td>
</tr>
<tr>
<td>47. Recovery of Damages from and Prohibition of Unsolicited Commercial Telefacsimile Transmissions</td>
<td>507</td>
</tr>
<tr>
<td>48. Provisions Rendering Certain Assignees and Lenders Subject to Claims and Defenses</td>
<td>519</td>
</tr>
<tr>
<td>49. Increasing Recovery of Attorney's Fees and Collection Costs</td>
<td>525</td>
</tr>
<tr>
<td>50. Refund to Debtors of Unused Insurance Premiums Upon Payment in Full of Debt</td>
<td>527</td>
</tr>
<tr>
<td>51. Repeal of Section Creating Consumer Affairs Advisory Council</td>
<td>531</td>
</tr>
<tr>
<td><strong>CORRECTIONS</strong></td>
<td></td>
</tr>
<tr>
<td>52. Providing Funds for Construction of Regional Jails and Correctional Facilities</td>
<td>532</td>
</tr>
<tr>
<td>53. Operation of Minimum or Medium Security Private Correctional Facilities Within the State</td>
<td>539</td>
</tr>
<tr>
<td>54. Continuing the Division of Corrections</td>
<td>564</td>
</tr>
<tr>
<td>55. Monitoring of Inmate Telephone Calls</td>
<td>565</td>
</tr>
<tr>
<td>56. Repeal of Sections Relating to Payment By Counties of Costs of Detention of Youths By Commissioner of Corrections</td>
<td>566</td>
</tr>
<tr>
<td>57. Appropriation for Buildings, Equipment, Etc., and Maximum Amount Allowed on Deposit in Prison Industries Account</td>
<td>567</td>
</tr>
</tbody>
</table>
# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Courts and Their Officers</strong></td>
<td></td>
</tr>
<tr>
<td>58. Extending the January Term of Court in Ohio County</td>
<td>569</td>
</tr>
<tr>
<td>59. Changing Term of Court for the Sixteenth Judicial Circuit in Marion County</td>
<td>570</td>
</tr>
<tr>
<td>60. Preservation and Destruction of Papers Filed in Circuit Courts</td>
<td>570</td>
</tr>
<tr>
<td>61. Court Reporter Original Fees and Fees for Copies</td>
<td>572</td>
</tr>
<tr>
<td>62. Time Period for Petitioning for an Appeal to the Supreme Court</td>
<td>573</td>
</tr>
<tr>
<td><strong>Crimes and Their Punishment</strong></td>
<td></td>
</tr>
<tr>
<td>63. Misdemeanor Offense of Impersonating a Law-Enforcement Officer</td>
<td>576</td>
</tr>
<tr>
<td>64. Records of Purchases of Scrap Metal By Junk Dealers, Salvage Yards or Recycling Facilities</td>
<td>577</td>
</tr>
<tr>
<td>65. Labeling of Video Movie Ratings</td>
<td>579</td>
</tr>
<tr>
<td><strong>Crime Victims</strong></td>
<td></td>
</tr>
<tr>
<td>66. Transfer of Crime Victims Compensation Fund</td>
<td>581</td>
</tr>
<tr>
<td>67. Imposing Costs on Persons Convicted of DUI and Deposit of Such Costs Into the Crime Victims Compensation Fund</td>
<td>591</td>
</tr>
<tr>
<td><strong>Deputy Sheriffs</strong></td>
<td></td>
</tr>
<tr>
<td>68. Unlimited Unpaid Sick Leave for Deputy Sheriffs</td>
<td>595</td>
</tr>
<tr>
<td><strong>Domestic Relations</strong></td>
<td></td>
</tr>
<tr>
<td>69. Repeal of Section Relating to Marriages Between Colored Persons</td>
<td>596</td>
</tr>
<tr>
<td>70. Relating to Prevention of Domestic Violence</td>
<td>597</td>
</tr>
<tr>
<td><strong>Economic Development</strong></td>
<td></td>
</tr>
<tr>
<td>71. Creating the Division of Tourism and Parks and West Virginia Guaranteed Work Force Program</td>
<td>606</td>
</tr>
<tr>
<td>72. Customized Job Training Program</td>
<td>637</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td></td>
</tr>
<tr>
<td>73. Designating the Birthday of Martin Luther King as a Legal School Holiday</td>
<td>639</td>
</tr>
<tr>
<td>74. Public Participation in Promulgation of State Board of Education Rules</td>
<td>644</td>
</tr>
<tr>
<td>75. Commercial Driver's License for School Personnel</td>
<td>656</td>
</tr>
<tr>
<td>76. Revising Higher Education Degree Definition and Adding an In-Field Master's Degree</td>
<td>657</td>
</tr>
<tr>
<td>77. Competency Testing for School Service Personnel</td>
<td>662</td>
</tr>
<tr>
<td>78. Membership Terms of Faculty and Classified Employee Advisory Councils</td>
<td>665</td>
</tr>
<tr>
<td><strong>Elections</strong></td>
<td></td>
</tr>
<tr>
<td>79. Numbered Divisions Within Multi-Judge Circuits for Election Purposes</td>
<td>669</td>
</tr>
<tr>
<td>80. Electronic Voting Systems</td>
<td>679</td>
</tr>
</tbody>
</table>
## Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EMINENT DOMAIN</strong></td>
<td></td>
</tr>
<tr>
<td>81. Expanding Definition and Implementing Uniform Re-Assistance Act</td>
<td>701</td>
</tr>
<tr>
<td><strong>ENERGY</strong></td>
<td></td>
</tr>
<tr>
<td>82. Use of Special Revenue Funds by the Commissioner of Energy</td>
<td>702</td>
</tr>
<tr>
<td><strong>ETHICS</strong></td>
<td></td>
</tr>
<tr>
<td>83. Implementing Recommendations of the West Virginia Ethics Commission</td>
<td>707</td>
</tr>
<tr>
<td><strong>EVIDENCE AND WITNESSES</strong></td>
<td></td>
</tr>
<tr>
<td>84. Prohibiting Compelled Testimony of Priests, Nuns, Ministers and Rabbis</td>
<td>736</td>
</tr>
<tr>
<td>85. Certain Reproductions Deemed Duplicates</td>
<td>737</td>
</tr>
<tr>
<td><strong>FARM MANAGEMENT COMMISSION</strong></td>
<td></td>
</tr>
<tr>
<td>86. Continuing the Farm Management Commission for Completion of Performance Audit</td>
<td>738</td>
</tr>
<tr>
<td><strong>FIRE PREVENTION</strong></td>
<td></td>
</tr>
<tr>
<td>87. Removing Requirement That a Copy of the State Fire Code be Filed with Each County Clerk</td>
<td>745</td>
</tr>
<tr>
<td>88. Authorizing the Use of Live Trees in Public Buildings</td>
<td>747</td>
</tr>
<tr>
<td><strong>GASOLINE</strong></td>
<td></td>
</tr>
<tr>
<td>89. Posting the Alcoholic Content of Gasoline</td>
<td>747</td>
</tr>
<tr>
<td><strong>GEOLOGICAL SURVEY</strong></td>
<td></td>
</tr>
<tr>
<td>90. Continuation of the Geological Survey Program</td>
<td>748</td>
</tr>
<tr>
<td><strong>HEALTH</strong></td>
<td></td>
</tr>
<tr>
<td>91. Closure of Certain Hospitals and Facilities</td>
<td>749</td>
</tr>
<tr>
<td>92. Fees for Services by the Division of Health</td>
<td>757</td>
</tr>
<tr>
<td>93. Certificate of Need and Exemptions Therefrom</td>
<td>759</td>
</tr>
<tr>
<td>94. Powers and Duties of the State Health Planning and Development Agency</td>
<td>776</td>
</tr>
<tr>
<td>95. Copies of Health Care Records</td>
<td>780</td>
</tr>
<tr>
<td>96. Termination Date of the Task Force on Uncompensated Health Care and Medicaid Expenditures</td>
<td>782</td>
</tr>
<tr>
<td>97. Medical Power of Attorney Act</td>
<td>785</td>
</tr>
<tr>
<td>98. Designee of Director of Health to be a Member of the Board of Medicine and to Act as Secretary</td>
<td>798</td>
</tr>
<tr>
<td><strong>HORSE AND DOG RACING</strong></td>
<td></td>
</tr>
<tr>
<td>99. Powers and Authority of Racing Commission</td>
<td>800</td>
</tr>
<tr>
<td>100. Televised Racing Days</td>
<td>803</td>
</tr>
<tr>
<td>Chapter</td>
<td>Topic</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>101</td>
<td>Reimbursement of Capital Costs for Certain Health Care Facilities</td>
</tr>
<tr>
<td>102</td>
<td>Transfer of Authority Prohibited for Plum Orchard Lake, Pleasants Creek, Big Ditch Lake and Teeter Creek</td>
</tr>
<tr>
<td>103</td>
<td>Designating Moncove Lake Public Hunting and Fishing Area as a State Park</td>
</tr>
<tr>
<td>104</td>
<td>Additional Compensation Paid to County Officials for Issuance of Hunting, Trapping and Fishing Licenses</td>
</tr>
<tr>
<td>105</td>
<td>Small Arms Hunting License</td>
</tr>
<tr>
<td>106</td>
<td>Eliminating the Antlered Deer Only Restriction</td>
</tr>
<tr>
<td>107</td>
<td>Primary Malpractice Insurance for Treatment of Medicaid Obstetric Patients</td>
</tr>
<tr>
<td>108</td>
<td>Capital and Surplus Requirements of Insurers and Minimum Amount of Tax Payable</td>
</tr>
<tr>
<td>109</td>
<td>Continuing Education Program for Agents</td>
</tr>
<tr>
<td>110</td>
<td>Required Reporting of an Impairment in the Financial Condition of an Insurance Company</td>
</tr>
<tr>
<td>111</td>
<td>Agents, Brokers, Solicitors and Excess Line Agents</td>
</tr>
<tr>
<td>112</td>
<td>Group Life Insurance Dependent Coverage</td>
</tr>
<tr>
<td>113</td>
<td>Third Party Reimbursement for Rehabilitation Services</td>
</tr>
<tr>
<td>114</td>
<td>Group Health Insurance Conversion</td>
</tr>
<tr>
<td>115</td>
<td>Regulating the Declination and Termination of Property Insurance Policies</td>
</tr>
<tr>
<td>116</td>
<td>Premium Reduction for Certain Drivers</td>
</tr>
<tr>
<td>117</td>
<td>Requiring Hospital, Medical, Dental and Health Service Corporations Each to Provide Coverage for Mental Illness</td>
</tr>
<tr>
<td>118</td>
<td>Home Detention Act Established</td>
</tr>
<tr>
<td>119</td>
<td>Prohibiting Off-Duty Employment of Law-Enforcement Officers in Labor Disputes</td>
</tr>
<tr>
<td>120</td>
<td>Legislative Rules for Various State Agencies</td>
</tr>
<tr>
<td>121</td>
<td>Defining “Next Meeting of the Senate”</td>
</tr>
<tr>
<td>122</td>
<td>Charges for Use of Legislative Computer Subscriber System</td>
</tr>
</tbody>
</table>
# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIENS</td>
<td></td>
</tr>
<tr>
<td>123. Clarifying Obligatory and Nonobligatory Future Advances</td>
<td>1037</td>
</tr>
<tr>
<td>LOCAL POWERS ACT</td>
<td></td>
</tr>
<tr>
<td>124. Establishing the Local Powers Act</td>
<td>1041</td>
</tr>
<tr>
<td>LOTTERY</td>
<td></td>
</tr>
<tr>
<td>125. Setting Forth Revisions to the State Lottery Act</td>
<td>1053</td>
</tr>
<tr>
<td>MENTALLY ILL PERSONS</td>
<td></td>
</tr>
<tr>
<td>126. Removing State Licensing Requirement of Physicians Treating Individuals Subject to Incompetency Hearings</td>
<td>1064</td>
</tr>
<tr>
<td>MOTOR VEHICLES</td>
<td></td>
</tr>
<tr>
<td>127. Registration Fees for Certain Classes of Vehicles</td>
<td>1068</td>
</tr>
<tr>
<td>128. Special License Plates for Survivors of the Attack on Pearl Harbor</td>
<td>1075</td>
</tr>
<tr>
<td>129. Definition of Total Loss Vehicle and Licensing of Wreckers or Dismantler/Rebuilders</td>
<td>1081</td>
</tr>
<tr>
<td>130. Making it Unlawful to be an Automobile Broker</td>
<td>1113</td>
</tr>
<tr>
<td>131. Compensation to Dealers for Service Rendered on Warranty and Factory Recall Work</td>
<td>1114</td>
</tr>
<tr>
<td>132. Felony Offense of Theft of a Rented or Leased Vehicle</td>
<td>1116</td>
</tr>
<tr>
<td>133. Felony Offense of Theft of Motor Vehicle Offered for Sale Which has been Obtained for Temporary Use for Demonstration Purposes</td>
<td>1117</td>
</tr>
<tr>
<td>134. Motorcycle Safety and Motorcycle Safety Program</td>
<td>1118</td>
</tr>
<tr>
<td>135. Penalties for Overtaking and Passing School Buses</td>
<td>1132</td>
</tr>
<tr>
<td>136. Altered Motor Vehicle Suspension Systems</td>
<td>1134</td>
</tr>
<tr>
<td>137. Reducing Operator's License Suspension Period and Removing High Risk Insurance Requirement for Certain Drivers</td>
<td>1136</td>
</tr>
<tr>
<td>138. Authorizing Service of Process on Defendant's Insurance Company When Attempts to Locate Defendant Fail</td>
<td>1139</td>
</tr>
<tr>
<td>MUNICIPALITIES</td>
<td></td>
</tr>
<tr>
<td>139. Repeal of Article Relating to Notice of Suit Against Municipalities</td>
<td>1144</td>
</tr>
<tr>
<td>140. Nonliability of Owner of Real Property for Delinquent Utility Rates or Charges</td>
<td>1145</td>
</tr>
<tr>
<td>141. Acquisition or Construction of Electric Power and Waterworks Systems</td>
<td>1151</td>
</tr>
<tr>
<td>NATIONAL GUARD</td>
<td></td>
</tr>
<tr>
<td>142. American Flag Burial for Deceased Members of the National Guard</td>
<td>1172</td>
</tr>
<tr>
<td>Chapter</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>143</td>
<td>Sales of Public Land to Federal or State Entities for Less than Fair Market Value</td>
</tr>
<tr>
<td>144</td>
<td>Interstate Wildlife Violator Compact</td>
</tr>
<tr>
<td>145</td>
<td>Limitation on Liability of Horse Owners for Injury Resulting from Equestrian Activity</td>
</tr>
<tr>
<td>146</td>
<td>Definition of Term “Other Wastes” in the Water Pollution Control Act</td>
</tr>
<tr>
<td>147</td>
<td>Underground Storage Tank Management</td>
</tr>
<tr>
<td>148</td>
<td>Clarifying Unlawful Negligent Shooting, Wounding or Killing of Humans or Livestock While Hunting</td>
</tr>
<tr>
<td>149</td>
<td>Payment of Costs for Extradition of Criminals</td>
</tr>
<tr>
<td>150</td>
<td>Permitting Graduates of Approved Vocational Programs to Take the Journeyman Electrician's Test and be Awarded a License</td>
</tr>
<tr>
<td>151</td>
<td>Voluntary Treatment of Physicians, Podiatrists and Physician Assistants for Alcohol or Chemical Dependency</td>
</tr>
<tr>
<td>152</td>
<td>General Revision of the Law Governing Architects</td>
</tr>
<tr>
<td>153</td>
<td>Permitting License Fees for Hearing-Aid Dealers and Fitters to be Established by Rule</td>
</tr>
<tr>
<td>154</td>
<td>Public Defender Services</td>
</tr>
<tr>
<td>155</td>
<td>State Library Commission Authorized to Offer Certain Printed Matter for Sale</td>
</tr>
<tr>
<td>156</td>
<td>Confidentiality of Users of Library Materials</td>
</tr>
<tr>
<td>157</td>
<td>Establishment of a Career Progression System Within the Department of Public Safety, Salary Increases, Classification and Promotion</td>
</tr>
<tr>
<td>158</td>
<td>Reimbursement by the Division of Motor Vehicles to the Division of Public Safety for Services Rendered</td>
</tr>
<tr>
<td>159</td>
<td>Retired Members of the Division of Public Safety Permitted to Carry a Handgun</td>
</tr>
<tr>
<td>160</td>
<td>Awarding Members of the Department of Public Safety Their Service Revolver Upon Retirement</td>
</tr>
<tr>
<td>161</td>
<td>Cessation of Jurisdiction Over Rates for Certain Services of Telephone Utilities</td>
</tr>
<tr>
<td>162</td>
<td>Conferring Ratemaking Jurisdiction for Access Charges of Telephone Cooperatives</td>
</tr>
<tr>
<td>163</td>
<td>Emergency Telephone Systems</td>
</tr>
<tr>
<td>Chapter</td>
<td>Title</td>
</tr>
<tr>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>RAFFLES</td>
<td>Charitable Raffles</td>
</tr>
<tr>
<td>REAL PROPERTY</td>
<td>Real Estate Appraiser Licensing and Certification Act</td>
</tr>
<tr>
<td>REGULATION OF TRADE</td>
<td>Annual Registration Fees, Bedding and Upholstery Business</td>
</tr>
<tr>
<td>RETIREMENT</td>
<td>Supplemental Benefits Under the Policemen's and Firemen's Pension and Relief Funds</td>
</tr>
<tr>
<td>SMALL BUSINESS ASSISTANCE</td>
<td>Small Business Expansion Assistance Program</td>
</tr>
<tr>
<td>SOLID WASTE</td>
<td>Solid Waste and Disposal</td>
</tr>
<tr>
<td></td>
<td>County Recycling Program for Solid Waste</td>
</tr>
<tr>
<td>SUNSET</td>
<td>Termination of Governmental Entities or Programs</td>
</tr>
<tr>
<td>TAXATION</td>
<td>Taxation and Property Valuation</td>
</tr>
<tr>
<td></td>
<td>Tax Exemption for Property Used by Nonprofit Corporations Providing Natural Gas for Public Purposes</td>
</tr>
<tr>
<td></td>
<td>Timely Filing and Payment of Ad Valorem Real or Personal Property Taxes</td>
</tr>
<tr>
<td></td>
<td>Exemptions Under Consumers Sales Tax Law</td>
</tr>
<tr>
<td></td>
<td>Business Investment and Jobs Expansion Credit Restrictions and Limitations</td>
</tr>
<tr>
<td></td>
<td>Credit for Qualified Rehabilitated Buildings Investment</td>
</tr>
<tr>
<td></td>
<td>Personal Income Tax Terms</td>
</tr>
<tr>
<td></td>
<td>Business Franchise and Corporation Net Income Tax Terms</td>
</tr>
<tr>
<td>TRAFFIC REGULATIONS</td>
<td>Penalties for Violations of Handicapped Parking Privileges</td>
</tr>
<tr>
<td>TREASURER</td>
<td>Responsibilities of State Treasurer</td>
</tr>
<tr>
<td></td>
<td>Requiring Bank Reconciliations and the Balancing of State Accounts in a Timely Manner</td>
</tr>
<tr>
<td>TURNPIKE</td>
<td>Continued Toll Collection at the Intersection of U.S. Route 19 and the Turnpike</td>
</tr>
</tbody>
</table>
Chapter

UNCLAIMED PROPERTY
184. Presumption of Abandonment of Property ........................................ 1469

UNEMPLOYMENT COMPENSATION
185. Unemployment Compensation Generally ........................................ 1476

UNIFORM STATE LAWS
186. Life Members of the Commission ..................................................... 1496

VETERANS
187. Transfer of Administration of Division of Veterans' Affairs and Veterans' Council to the Department of Public Safety ......... 1497
188. State Homes for Veterans ............................................................... 1506

WAYPORT AUTHORITY
189. Creation of the West Virginia Wayport Authority ............................ 1508

WOMEN'S COMMISSION
190. Continuing the Women's Commission and Correcting Designation of Ex Officio Members ............................................................... 1524

WORKERS' COMPENSATION
191. Continuing the Office of Workers' Compensation Commissioner .... 1525

LOCAL LAWS
Fayette County
192. Establishing the Fayette County New River Gorge Bridge Day Commission ................................................................. 1528

Hancock County
193. Repeal of Act Requiring the Providing of Funds for Certain Monuments, Marking of Certain Graves, Etc .......................... 1531

Mercer County
194. Mercer County Tourist Train Authority .......................................... 1532

Morgan County
195. Board of Directors of Morgan County War Memorial Hospital ...... 1534

Putnam County
196. Extending Time for County Commission to Meet as Levying Body for Election to Continue Additional Levy for Parks, Recreation and Library Services .................................................. 1536

Spencer
197. Farm Management Commission and Division of Health Directed to Convey Spencer State Hospital Institutional Farm and Spencer State Hospital to the City of Spencer ........................................ 1537
### RESOLUTIONS

(Only resolutions of general interest are included herein)

<table>
<thead>
<tr>
<th>Number</th>
<th>Concurrent</th>
</tr>
</thead>
<tbody>
<tr>
<td>HCR 1</td>
<td>Raising a Joint Assembly to Hear an Address by His Excellency, the Governor</td>
</tr>
<tr>
<td>HCR 21</td>
<td>Relocation of FBI Identification Division in West Virginia</td>
</tr>
<tr>
<td>HCR 40</td>
<td>Interim Review, Examination and Study of Solid and Toxic Waste Management</td>
</tr>
<tr>
<td>SCR 19</td>
<td>Establishing the West Virginia Health Care Delivery and Accessibility Task Force</td>
</tr>
<tr>
<td>SCR 30</td>
<td>Approving Purpose and Amount of Certain Projects of the West Virginia Regional Jail and Correctional Facilities Authority</td>
</tr>
</tbody>
</table>

**House**

<table>
<thead>
<tr>
<th>Number</th>
<th>Concurrent</th>
</tr>
</thead>
<tbody>
<tr>
<td>HR 19</td>
<td>Amending the Rules of the House of Delegates Relating to Prohibiting Smoking and the use of all Other Tobacco Products in the Chamber, Galleries and Committee Rooms During Meetings</td>
</tr>
</tbody>
</table>

**Senate**

<table>
<thead>
<tr>
<th>Number</th>
<th>Concurrent</th>
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</thead>
<tbody>
<tr>
<td>SR 3</td>
<td>Amending Senate Rule 27, Relating to Standing Committees of the Senate</td>
</tr>
<tr>
<td>SR 13</td>
<td>Amending Rules of the Senate Relating to Defining the Phrase “Next Meeting of the Senate”</td>
</tr>
</tbody>
</table>

### First Extraordinary Session, 1990

**Chapter**

**APPROPRIATIONS**

1. Supplementing, Amending, Reducing and Transferring Appropriations in Acct. No. 2950, State Department of Education—State Aid to Schools | 1551 |

**EDUCATION**

2. General Revision of the Law Governing Public Education | 1553 |

### Second Extraordinary Session, 1990

**Chapter**

**APPROPRIATIONS**

1. Supplemental Appropriations to Various Accounts for Salary Increases | 1589 |
2. Supplemental Appropriation, Consolidated Medical Services Fund, Acct. No. 4190 | 1593 |
# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Appropriations—(Continued)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>Supplemental Appropriation, Division of Motor Vehicles, Acct. No. 6710</td>
<td>1594</td>
</tr>
<tr>
<td>4.</td>
<td>Supplementing, Amending, Reducing and Transferring Appropriations in Various Accounts</td>
<td>1595</td>
</tr>
<tr>
<td></td>
<td><strong>Charitable Funds</strong></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Solicitation of Charitable Funds Act</td>
<td>1600</td>
</tr>
<tr>
<td></td>
<td><strong>Child Support</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Emergency Services</strong></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>West Virginia Disaster Recovery Act</td>
<td>1614</td>
</tr>
<tr>
<td></td>
<td><strong>Energy</strong></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Public Energy Authority</td>
<td>1626</td>
</tr>
<tr>
<td></td>
<td><strong>Homestead Property Tax Exemption</strong></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Revision of the Law Concerning Exemption</td>
<td>1646</td>
</tr>
<tr>
<td></td>
<td><strong>Retirement</strong></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Permitting Retired Public Employees to Serve on Certain Boards and Commissions</td>
<td>1650</td>
</tr>
<tr>
<td></td>
<td><strong>WIC Program</strong></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Establishment of Special Advance Payment Account</td>
<td>1658</td>
</tr>
<tr>
<td></td>
<td><strong>Workers’ Compensation</strong></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>General Revision of Law</td>
<td>1660</td>
</tr>
</tbody>
</table>
MEMBERS OF THE SENATE

REGULAR SESSION, 1990

OFFICERS

President—Keith Burdette, Parkersburg
President Pro Tem—Homer Heck, Huntington
Clerk—Darrell E. Holmes, Charleston
Sergeant at Arms—Estil Bevins, Williamson
Doorkeeper—Porter Cotton, Cabin Creek

<table>
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<tr>
<th>District</th>
<th>Name</th>
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<tbody>
<tr>
<td>First</td>
<td>Thais Blatnik (D)</td>
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</tr>
<tr>
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<td>Parkersburg</td>
</tr>
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<td>Hurricane</td>
</tr>
<tr>
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<td>Ravenswood</td>
</tr>
<tr>
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<td>Homer Heck (D)</td>
<td>Huntington</td>
</tr>
<tr>
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<tr>
<td>Sixth</td>
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</tr>
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<td></td>
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</tr>
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<td>Lloyd G. Jackson II (D)</td>
<td>Hamlin</td>
</tr>
<tr>
<td></td>
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<td>Chapmanville</td>
</tr>
<tr>
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<td>Charleston</td>
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</tr>
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</tr>
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<td></td>
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<td>Pineville</td>
</tr>
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</tr>
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<td>Tony E. Whitlow (D)</td>
<td>Kellyville</td>
</tr>
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<td>J. D. Brackenrich (D)</td>
<td>Lewisburg</td>
</tr>
<tr>
<td></td>
<td>Robert K. Holliday (D)</td>
<td>Fayetteville</td>
</tr>
<tr>
<td>Twelfth</td>
<td>Walt Helmick (D)</td>
<td>Marlinton</td>
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<tr>
<td></td>
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</tr>
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<td>Thirteenth</td>
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<td>Weston</td>
</tr>
<tr>
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<td>Clarksburg</td>
</tr>
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<td>Joe Manchin, III (D)</td>
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</tr>
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<td>Morgantown</td>
</tr>
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</tr>
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</tr>
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<tr>
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</tr>
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<td>Charlotte Jean Pritt (D)</td>
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</tr>
<tr>
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<td>Martha G. Wehrle (D)</td>
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</tr>
</tbody>
</table>

1 Appointed to fill the vacancy created by the resignation of Thomas E. Loehr.
2 Appointed to fill the vacancy created by the resignation of John Boettner, Jr.
3 Appointed to fill the vacancy created by the resignation of Larry A. Tucker.
4 Appointed to fill the vacancy created by the resignation of Darrell E. Holmes.

(D) Democrats................................................. 30
(R) Republicans.............................................. 4
Total..........................................................34

[ xix ]
MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1990

OFFICERS
Speaker—Robert C. Chambers, Huntington
Speaker Pro Temp—Marjorie H. Burke, Sand Fork
Clerk—Donald L. Kopp, Clarksburg
Sergeant at Arms—Oce W. Smith, Jr., Fairmont
Doorkeeper—Dannie Wingo, Yukon

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>Sam Love (D)</td>
<td>Weirton</td>
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<td>Wheeling</td>
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</tr>
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<td>McMechen</td>
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<tr>
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</tr>
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</tr>
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<td>Parkersburg</td>
</tr>
<tr>
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<td>Marjorie H. Burke (D)</td>
<td>Sand Fork</td>
</tr>
<tr>
<td></td>
<td>Randy Schoonover (D)</td>
<td>Clay</td>
</tr>
<tr>
<td>Tenth</td>
<td>Bob Ashley (R)</td>
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<td>Eleventh</td>
<td>Virginia Jolliffe Starcher (D)</td>
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<td>Twelfth</td>
<td>Charley Damron (D)</td>
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<td>Lydia D. Long (D)</td>
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</tr>
<tr>
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</tr>
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</tr>
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</tr>
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<td>Kenneth Adkins (D)</td>
<td>Huntington</td>
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<td>Walter Rollins (D)</td>
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<td>Fifteenth</td>
<td>Jim Reid (D)</td>
<td>Williamson</td>
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<td>Mike Whitt (D)</td>
<td>Meador</td>
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<td>Sixteenth</td>
<td>W. E. Anderson (D)</td>
<td>Logan</td>
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<td>Sammy D. Dalton (D)</td>
<td>Harts</td>
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<td>Joe C. Ferrell (D)</td>
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<td>David E. Whitman (D)</td>
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<td>Seventeenth</td>
<td>Delores W. Cook (D)</td>
<td>Ridgeview</td>
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<td>Eighteenth</td>
<td>Ernest C. Moore (D)</td>
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<td>Rick Murensky (D)</td>
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<td>Richard Browning (D)</td>
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<td>W. Richard Staton (D)</td>
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<td>Twentieth</td>
<td>Terry W. Basham (D)</td>
<td>Rock</td>
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<td>Twenty-first</td>
<td>Mary Pearl Compton (D)</td>
<td>Union</td>
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<td>Twenty-second</td>
<td>Robert S. Kiss (D)</td>
<td>Prosperity</td>
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<td>Twenty-third</td>
<td>Ramona Gail Cerra (D)</td>
<td>Charleston</td>
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<td>Twenty-fourth</td>
<td>Paul M. Blake, Jr. (D)</td>
<td>Fayetteville</td>
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<td>Twenty-fifth</td>
<td>James J. Rowe (D)</td>
<td>Lewisburg</td>
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<td>Twenty-sixth</td>
<td>C. Farrell Johnson (D)</td>
<td>Summersville</td>
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<td>Twenty-seventh</td>
<td>Joe Martin (D)</td>
<td>Elkins</td>
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<td>Twenty-eighth</td>
<td>Dale Riggs (R)</td>
<td>Buckhannon</td>
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<tr>
<td>Thirtieth</td>
<td>Percy C. Ashcraft, II (D)</td>
<td>Clarksburg</td>
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<tr>
<td>Thirty-first</td>
<td>Nick Fantasia (D)</td>
<td>Kingmont</td>
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<td>Michael A. Buchanan (D)</td>
<td>Morgantown</td>
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<td>Thirty-third</td>
<td>David F. Miller (D)</td>
<td>Kingwood</td>
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<td>Phyllis M. Cole (R)</td>
<td>Petersburg</td>
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<td>Thirty-fifth</td>
<td>Harold K. Michael (D)</td>
<td>Moorefield</td>
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<td>Thirty-sixth</td>
<td>Jerry L. Mezzatesta (D)</td>
<td>Romney</td>
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<td>Thirty-seventh</td>
<td>Patrick H. Murphy (D)</td>
<td>Martinsburg</td>
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<td>Thirty-eighth</td>
<td>Larry V. Faircloth (R)</td>
<td>Inwood</td>
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<tr>
<td>Thirty-ninth</td>
<td>John Overington (R)</td>
<td>Martinsburg</td>
</tr>
<tr>
<td>Fortieth</td>
<td>Dale Manuel (D)</td>
<td>Charles Town</td>
</tr>
</tbody>
</table>

1 Appointed to fill the vacancy created by the resignation of Patricia Bradley.
2 Appointed to fill the vacancy created by the resignation of James F. Humphreys.
3 Appointed to fill the vacancy created by the resignation of W. L. Helmick.
4 Appointed to fill the vacancy created by the resignation of Twila S. Metheny.
5 Appointed to fill the vacancy created by the resignation of Marc L. Harman.

(D) Democrats | 80
(R) Republicans | 20
Total | 100
COMMITTEES OF THE
HOUSE OF DELEGATES
Regular Session, 1990

STANDING
Agriculture and Natural Resources

Buchanan (Chairman of Agriculture), Peddicord (Vice Chairman of Agriculture), Love (Chairman of Natural Resources), Reid (Vice Chairman of Natural Resources), Ashcraft, Burke, Clonch, Compton, B. Hatfield, Martin, Michael, Murphy, Pethel, Pitrolo, Schoonover, Staton, Tribett, Warner, Whitman, Wilson, Leggett, Overington, Riggs, Stemple and Willison.

Banking and Insurance

Phillips (Chairman of Banking), Minard (Vice Chairman of Banking), Susman (Chairman of Insurance), Adkins (Vice Chairman of Insurance), Berry, Cerra, Dalton, Damron, Fantasia, Flanagan, Gallagher, Grubb, Houvouras, Katz, Kephart, Michael, Queen, Rutledge, White, Wooton, Ashley, Criss, McKinley, Riggs and Shores.

Constitutional Revision

Given (Chairman), Wooton (Vice Chairman), Basham, Blake, Browning, D. Cook, Grubb, Kelly, Kiss, Long, Louderback, Manuel, Martin, Murensky, Prezioso, Rowe, Sattes, Shepherd, V. Starcher, Staton, Faircloth, Overington, Richards, Stemple and Wallace.

Education

Sattes (Chairman), Ashcraft (Vice Chairman), Bird, Blake, Compton, D. Cook, Dalton, Fantasia, Farmer, Gallagher, Long, Merow, Mezzatesta, D. Miller, Pettit, Queen, Sharp, Spencer, Susman, Williams, Leggett, Otte, Overington, Richards and Willison.

[xxii]
Finance

Farley (Chairman), Murphy (Vice Chairman), Adkins, Anderson, Browning, Burke, S. Cook, B. Hatfield, Houvouras, Kiss, Martin, Minard, Peddicord, Phillips, Prezioso, Rutledge, Seacrist, V. Starcher, White, Wooton, Conley, Criss, Faircloth, McKinley and Stemple.

Government Organization

Givens (Chairman), Flanigan (Vice Chairman), Cerra, Clonch, T. Hatfield, Johnson, Kelly, Kephart, Louderback, Love, Mezzatesta, Michael, Morgan, Rollins, Ryan, Schoonover, C. Starcher, Tribett, Whitman, Wooton, Cole, Riggs, Schadler, Shores and Wallace.

Health and Human Resources

B. Hatfield (Chairman), White (Vice Chairman), Berry, S. Cook, Browning, Fantasia, Flanigan, Katz, Louderback, Merow, Mezzatesta, D. Miller, Moore, Pettit, Roop, Spencer, C. Starcher, Susman, Warner, Wilson, Ashley, Conley, Deem, Otte and Richards.

Industry and Labor

Moore (Chairman), Spencer (Vice Chairman), Adkins, Anderson, Bird, Clonch, Compton, S. Cook, Farmer, Ferrell, Gallagher, Given, Long, D. Miller, Pethel, Ryan, Schoonover, Whitman, Williams, Deem, McKinley, P. Miller, Overington and Schadler.

Judiciary

Hatcher (Chairman), Berry (Vice Chairman), Basham, Buchanan, Damron, Ferrell, Given, Grubb, Katz, Manuel, Moore, Pethel, Pitrolo, Reid, Roop, Rowe, Shepherd, Staton, Warner, Wilson, Ashley, Burk, Deem, Jones and P. Miller.

Political Subdivisions

Roop (Chairman), Mezzatesta (Vice Chairman), Clonch, Damron, T. Hatfield, Houvouras, Johnson, Kelly, Kiss, Manuel, Merow, Morgan, Murphy, Rowe, Ryan, Seacrist, Sharp, V. Starcher, Staton, Tribett, Cole, Jones, P. Miller, Shores and Willison.
Roads and Transportation

Anderson (Chairman), Pitrolo (Vice Chairman), Ashcraft, Basham, Blake, Buchanan, Burke, Cerra, D. Cook, Dalton, Farmer, Ferrell, Johnson, Love, Morgan, Peddicord, Reid, Seacrist, C. Starcher, Williams, Conley, Criss, Leggett, Schadler and Wallace.

Rules

Chambers (Chairman), Ashcraft, Burke, Farley, Givens, Hatcher, Murensky, Sattes, Seacrist, Wooton, Burk and Otte.

JOINT COMMITTEES

Enrolled Bills

Kelly (Chairman), Ryan (Vice Chairman), Sattes, Ashley and Jones.

Rules

Chambers (Co-Chairman), Murensky and Burk.

Government and Finance

Chambers (Co-Chairman), Farley, Hatcher, Murensky, Sattes, Ashley and Burk.

Legislative Rule-Making Review

Murphy (Acting Chairman), Buchanan, Roop, V. Starcher, Burk and Faircloth.
COMMITTEES OF THE SENATE
Regular Session, 1990

STANDING

Agriculture
Parker (Chairman), Dittmar (Vice Chairman), Hawse, Hel Mick, Lucht, Rundle, Spears, Whitlow, Wiedebusch and Wolfe.

Banking and Insurance
Thomas (Chairman), Heck (Vice Chairman), Craigo, Dittmar, Hawse, Jones, J. Manchin, Pritt, Rundle, Sharpe, Tomblin, Wagner and Wolfe.

Confirmations
Whitlow (Chairman), Blatnik (Vice Chairman), Chafin, Jackson, Lucht, Parker, Tomblin, Wehrle and Harman.

Education
Lucht (Chairman), M. Manchin (Vice Chairman), Blatnik, Brackenrich, Felton, Hawse, Holliday, Humphreys, Jones, Parker, Rundle, Wagner and Warner.

Energy, Industry and Mining
Sharpe (Chairman), Wehrle (Vice Chairman), Brackenrich, Chernenko, Felton, Helmick, Hylton, Jackson, J. Manchin, M. Manchin, Thomas, Wagner and Harman.

Finance
Tomblin (Chairman), Craigo (Vice Chairman), Blatnik, Brackenrich, Chernenko, Hawse, Jones, Lucht, J. Manchin, M. Manchin, Parker, Sharpe, Spears, Thomas, Wagner, Harman and Warner.

Government Organization
Spears (Chairman), Wiedebusch (Vice Chairman), Bracken-
rich, Chernenko, Craigo, Felton, Jackson, Jones, Lucht, J. Manchin, Parker, Tomblin, Wehrle and Boley.

**Health and Human Resources**

Holliday (*Chairman*), Pritt (*Vice Chairman*), Blatnik, Chernenko, Craigo, J. Manchin, Sharpe, Spears, Thomas, Boley and Harman.

**Interstate Cooperation**

Dittmar (*Chairman*), Hylton (*Vice Chairman*), Chafin, Heck, Holliday, M. Manchin, Pritt, Wehrle and Warner.

**Judiciary**


**Labor**

Chernenko (*Chairman*), Humphreys (*Vice Chairman*), Blatnik, Chafin, Helmick, Holliday, Hylton, Wagner, Wiedebusch and Boley.

**Military**

Felton (*Chairman*), Helmick (*Vice Chairman*), Blatnik, Chernenko, Heck, Rundle, Spears, Whitlow and Boley.

**Natural Resources**

Brackenrich (*Chairman*), Hawse (*Vice Chairman*), Chafin, Craigo, Helmick, Humphreys, Hylton, Parker, Spears, Thomas, Whitlow, Wiedebusch, Harman and Warner.

**Rules**

Burdette (*Chairman*), Blatnik, Brackenrich, Chafin, Craigo, Jackson, Lucht, Pritt, Tomblin and Harman.

**Small Business**

Jones (*Chairman*), J. Manchin (*Vice Chairman*), Blatnik, Craigo, Hawse, Hylton, M. Manchin, Pritt, Rundle, Tomblin, Warner and Wolfe.
TRANSPORTATION

Wagner (Chairman), Heck (Vice Chairman), Brackenrich, Craigo, Parker, Sharpe, Tomblin, Wiedebusch and Wolfe.

SELECT COMMITTEE

Ethical Standards and Practices

Wehrle (Chairman), Dittmar, Holliday, Lucht, Wagner, Whitlow and Harman.

JOINT COMMITTEES

Enrolled Bills

Parker (Chairman), Humphreys (Vice Chairman), Dittmar, Heck and Wolfe.

Government and Finance

Burdette (Co-Chairman), Chafin, Craigo, Jackson, Sharpe, Tomblin and Harman.

Legislative Rule-Making Review

Jackson (Chairman), Chafin, J. Manchin, Tomblin, Wiedebusch and Warner.

RULES

Burdette (Co-Chairman), Chafin and Harman.
LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 1990

CHAPTER 1

(Com. Sub. for H. B. 4045—By Delegates Phillips and Damron)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the statute of frauds; and providing that any offers, agreement, representation, assurance, understanding, commitment, or contract of a bank, savings and loan association or credit union, to extend credit or to make a loan of an amount in excess of fifty thousand dollars, primarily for nonagricultural business or commercial purposes, shall not be binding unless in writing and signed by the party to be charged.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATUTE OF FRAUDS.

§55-1-1. When writing required.

1 No action shall be brought in any of the following cases:

2 (a) To charge any person upon or by reason of a
representation or assurance concerning the character, conduct, credit, ability, trade, or dealings of another, to the intent or purpose that such other may obtain thereby credit, money, or goods; or

(b) To charge any person upon a promise made, after full age, to pay a debt contracted during infancy; or upon a ratification after full age, of a promise or simple contract made during infancy; or

(c) To charge a personal representative upon a promise to answer any debt or damages out of his own estate; or

(d) To charge any person upon a promise to answer for the debt, default, or misdoings of another; or

(e) Upon any agreement made upon consideration of marriage; or

(f) Upon any agreement that is not to be performed within a year; or

(g) Upon any offer, agreement, representation, assurance, understanding, commitment, or contract of a bank, savings and loan association, or credit union, to extend credit or to make a loan in excess of fifty thousand dollars, primarily for nonagricultural, business or commercial purposes, not including charge or credit card accounts, personal lines of credit, overdrafts, or any other consumer account: Provided, That this subsection shall not apply to any offer, agreement, representation, assurance, understanding, commitment or contract with a bank, savings and loan association or credit union in which a transaction has been completed as evidenced by a fund transfer;

Unless the offer, promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, be in writing and signed by the party to be charged thereby or his agent. But the consideration need not be set forth or expressed in the writing; and it may be proved (where a consideration is necessary) by other evidence.
AN ACT to repeal article eight, chapter five; sections two-a, two-b and two-c, article one, sections nineteen-a, thirty-three, thirty-five and thirty-six, article two, section fourteen-a, article three, sections one-a, six and seven, article four, article four-a, sections four and five, article five, and section three-a, article eight, all of chapter five-a; to amend and reenact sections three, four and seven, article six, chapter five; to amend and reenact sections one, two, three, four, five and six, article one, chapter five-a; to further amend said article one by adding thereto two new sections, designated sections seven and eight; to amend and reenact article one-a, chapter five-a; to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six and forty-seven, article three, chapter five-a; to further amend said article by adding thereto eleven new sections, designated sections one-a, seven, twenty-three, thirty-seven-a, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three and fifty-four; to amend and reenact article three-a, chapter five-a; to further amend said article by adding thereto eleven new sections, designated sections one-a, seven, twenty-three, thirty-seven-a, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three and fifty-four; to amend and reenact article three-a, chapter five-a; to amend and reenact sections one, two, three, four
and five, article four, chapter five-a; to amend and reenact sections one, two and three, article five, chapter five-a; to amend and reenact sections one, two, three, four, five, six, seven and eight, article seven, chapter five-a; to further amend said article by adding thereto three new sections, designated sections nine, ten and eleven; to amend and reenact sections one, two, three, four, five, six and seven, article eight, chapter five-a; to further amend said article by adding thereto twelve new sections, designated sections eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen; to amend and reenact section three, article nine, chapter five-a; to amend and reenact section seventeen, article three, chapter twelve; to amend and reenact sections one, article three, chapter fourteen and to amend and reenact sections seven and twenty-three, article six, chapter twenty-nine, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the reorganization of the department of administration; deleting prohibition against state building commission charging rent to general revenue agencies; powers of state building commission; contracts with state building commission over ten thousand dollars to be by competitive bids; definitions for chapter relating to department of administration; division of finance and administration abolished; transfer of duties and responsibilities to department of administration; divisions; division directors; powers and duties of secretary, division heads and employees; council of finance and administration; reports by secretary; bonds for director of purchasing, buyers and employees; cost of bonds; delegation of powers and duties by secretary; right of appeal from interference with functioning of agency to governor; employee suggestion award program; employee suggestion award board and term of members; duties of board and employees eligible for award; increasing maximum award; state ownership of suggestions; finance division created; director; budget and accounting sections created; powers and duties; general powers and duties of secretary of administration as director of budget; requests for appropriations; copies to legislative auditor.
and sanctions; request provision for state superintendent of schools; contents of requests for appropriation; form of requests for appropriations; secretary to ascertain information concerning state finances; judiciary appropriations; secretary to examine requests for appropriation; appropriation requests by other than spending units to be no later than the first day of September each year; secretary to supervise and control expenditure of appropriations, except those made to the judicial and legislative branches; secretary to estimate revenues month by month; secretary to ascertain revenue collections in proportion to estimate; withholding department of administration funds if secretary fails to provide information; submission of expenditure schedules to secretary; contents of expenditure schedules; copies of expenditure schedule to legislative auditor and sanctions; secretary to examine and approve expenditure schedules and amendments; legislative auditor to receive copies of expenditure schedules and amendments; secretary may require a reserve for emergencies out of the total appropriation to spending unit; requests for quarterly allotments in accordance with approved expenditure schedules; governor to approve or reduce amount of allotments; limitation on expenditures during a quarter; effectuating transfers between line items; expenditure of excess collections; approval by governor and notices to auditor, treasurer and legislative auditor; spending units to report work and expenditures to secretary; secretary to send copies to legislative auditor; power of governor to reduce appropriations; governor to reduce pro rata appropriations from general revenue to prevent overdraft or deficit; governor to reduce pro rata appropriations from other funds; secretary to approve requests for changes, receipt and expenditure of federal funds; legislative auditor to receive copies; secretary to submit consolidated report to governor and legislative auditor of all federal funds; secretary to formulate management accounting system; system to include accounts kept by secretary, auditor and treasurer; governor to approve system; system to be certified to legislative auditor; expenditure of appropriations; expenditure of appropriations other than for purchases
of commodities or printing; expenditure of appropriations for purchases of commodities; expenditure of appropriations for personal services; expenditure of appropriations by legislative and judicial branches; appropriations expenditures by spending units without offices at capitol; sanctions for failure to submit required requests, amendments and reports to legislative auditor; purchasing division created; purpose; director and qualifications for director; applicability of purchasing requirements; director authorized to deal with manufacturers of prescription drugs; director to keep books and records and have available for public inspection; powers and duties of director of purchasing; purchasing rules and regulations to be issued by director; standard specifications for purchasing to be promulgated and adopted by director; spending units required to utilize standard specifications; assistance from other spending units in promulgating standard specifications; director of purchasing to advise with heads of state and other institutions producing commodities and printing; director of purchasing to resolve conflicts between state and other entities with preference; director to make facilities and services of purchasing available to local governmental bodies; expenses incurred by purchasing to be paid by local governmental body; director of purchasing to examine and test purchases for nonconformity with contractual requirements; report required; sealed bids in the amount specified by regulation; publication of advertisements; purchase of products of nonprofit workshops; purchasing employee to assist with nonprofit workshops; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder, considering quality, conformity with specifications, suitability, availability and delivery; uniform bids; record of bids; public inspection of bids; vendor registration and payment of annual fee; contents of registration forms; false affidavits and penalties; director may waive vendor registration and fee for sole source and emergency purchases; contracts to be approved by attorney general as to form; filing with auditor; copies of purchase orders to be sent to finance
division for encumbrance; emergency purchases in open market; special fund created for purchases and maintenance of commodities in volume and printing; violation of purchasing laws and rules; personal liability; substituting commodity bearing particular trade name or brand for commodity meeting standard specifications at an equal or lower price; purchases from federal government, federal government contracts and higher education contracts; spending units to submit lists of expendable commodities; contracts for public printing and printing paper; printing plants at state and other institutions; legislative printing; printing of reports of supreme court of appeals; director of purchasing to print and bind reports to be transmitted to the governor; director to specify uniform standards for annual reports; limiting number of publications; purchasing division to perform printing and binding; exceptions; printing, binding and stationery to be paid from current expense and unclassified appropriations; director of purchasing to be custodian of reports and acts; sale of reports and acts by director; director of purchasing to establish central duplicating office; exemptions and contracts for duplicating; financial interest of secretary, director and employees of the purchasing division; receiving from interested party; penalties; applicability of bribery statute; penalty for violation of article; obtaining money and property by fraud or under false pretenses; penalties; corrupt combinations or conspiracies prohibited; penalties; director to suspend right to bid; notice of suspension; secretary to review suspension of right to bid; authority of director of purchasing over inventories and property; submission of annual inventories; inventory of personal property; maintenance and repair of office furniture, machinery and equipment; vendor preference; exceptions; leases for space; leasing of space by secretary; delegation of authority by regulation; selection of grounds, buildings, office space or other space; acquisition by contract for lease; long-term leases; permanent changes to be approved by secretary; leases and other instruments for space to be signed by secretary or director of purchasing; approval as to form; filing; leasing for space rules and regulations; state
agency for surplus property created; authority and duties of state agency for surplus property; disposition of surplus state property; semi-annual report of sales; application of sale proceeds; warehousing, transfer and other charges; department of agriculture and other agencies exempted from authority of state agency for surplus property; travel rules and regulations; exceptions; central motor pool for state-owned vehicles and aircraft; secretary to purchase and to dispose of vehicles and aircraft; maintenance and service to vehicles and aircraft; special fund for travel management created; expenditures; central nonprofit coordinating agency and committee for the purchase of commodities and services from the handicapped; purpose; central nonprofit agency duties and responsibilities; committee for purchase of commodities and services from the handicapped duties, responsibilities, compensation, and expenses; committee to adopt rules and regulations; exceptions from other code provisions; director of purchasing to determine comparable quality and price; general services division; director; general services division to have care, control and custody of capitol buildings and grounds; major renovations and repairs to be made at direction of secretary; security officers; appointment, oath and weapons; powers and duties of security officers; secretary to preserve law and order on capitol grounds; unlawful to kill or molest animals, birds or fowls upon capitol grounds; powers and duties of security officers; penalties; secretary to regulate parking on state-owned property; parking rules and regulations; legislative parking; penalties and enforcement; governor's mansion advisory committee created; appointment and terms of members; meetings and responsibilities of members; cooperation by spending units of state; annual report to be made to governor and Legislature; office of governor's mansion director created; duties and responsibilities of director; official use of state rooms in mansion; vacating private rooms of mansion by out-going governor; information services and communications division; definitions for division; information services and communications division created and purpose; use of facilities; rules and regula-
tions for division; director of division; appointment and qualifications of director; powers and duties of division; director to report on the economic justification, system design and suitability of equipment and systems used in state government; governor to review findings; authority of governor to order transfer of equipment and personnel; professional staff and reimbursement for education and training; approval of director required for procurements or changes in data-processing and/or telecommunications equipment or services; division to control central mailing office; central mailing office employees; central mailing office responsibilities; spending units to use central mailing office; preparation of mail for special rates; special fund created; payments into fund and charges for services; disbursements from fund; confidential records not to be delivered to division; public records management and preservation act; short title; declaration of policy for act; definitions used in act; categories of records to be preserved established; secretary of administration to be state records administrator; records management and preservation advisory committee; members, designated representatives, rules, meetings and compensation; duties of administrator; rules and regulations to be promulgated by administrator; duties of agency heads; preserving duplicates of essential state records; safekeeping of essential state records; maintenance, inspection and use of essential state records; confidential essential state records to be protected; administrator to review program at least annually; records management and preservation of local records; administrator to assist legislative and judicial branches; disposal of records; destruction of nonrecord materials; administrator to make annual written report to governor for transmission to Legislature; voluntary gilding the dome check-off program; contributions credited to special department of administration fund; public moneys and securities; appropriations, expenditures and deductions; liabilities incurred by state boards, commissions, officers or employee which cannot be paid out of current appropriations; claims due and against the state; interest on public contracts; payment of interest by the state on contracts when final payment
is delayed; miscellaneous boards and officers; civil service system; division of personnel; secretary of administration to appoint director of division of personnel; creating special revenue account for division of personnel and authorizing agencies to transmit funds for personnel services.

Be it enacted by the Legislature of West Virginia:

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

Chapter
5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

5A. Department of Administration.
14. Claims Due and Against the State.
29. Miscellaneous Boards and Officers.

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-3. Definitions.
§5-6-4. Powers of commission.
§5-6-7. Contracts with commission to be secured by bond; competitive bids required for certain contracts.

§5-6-3. Definitions.
1 The following terms, wherever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:
(1) "Commission" means the state building commission of West Virginia or, if said commission shall be abolished, any board or officer succeeding to the principal functions thereof, or to whom the powers given to said commission shall be given by law;

(2) "Bonds" means bonds issued by the commission pursuant to this article;

(3) "Project" means collectively the acquisition of land, the construction, equipping, maintaining and furnishing of a building or buildings, together with incidental approaches, structures and facilities, herein authorized to be constructed;

(4) "Cost of project" includes the cost of construction, the cost of equipping and furnishing same, the cost of all land, property, material and labor which are deemed essential thereto, the cost of improvements, financing charges, interest during construction, and all other expenses, including legal fees, trustees', engineers' and architects' fees which are necessarily or properly incidental to the project;

(5) "General tax revenues of the state" means revenues of the state derived from the exercise of the power of taxation and available for appropriation by the Legislature for general public purposes and shall not include revenues of the state, or of any officer, department or agency thereof, derived from taxes levied, collected and dedicated for a special purpose or purposes or derived from sources other than taxes such as profits, fees or charges; and

(6) "Rent" or "rental" includes all moneys received for the use of any part of a project either from the state of West Virginia or any officer, department or public corporation thereof, or from any instrumentality or political subdivision of the state, or directly or indirectly, from the United States of America or any officer, department, agency, instrumentality or public corporation thereof: Provided, That nothing in this article shall be taken to authorize the payment by or on behalf of the state of any rent in excess of the fair rental value of property used by or for such state officer or department
§5-6-4. Powers of commission.

The commission shall have power:

1. To sue and be sued, plead and be impleaded;
2. (2) To have a seal and alter the same at pleasure;
3. (3) To contract to acquire and to acquire, in the name of the commission or of the state, by purchase, lease, lease-purchase, or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish such purposes;
4. (4) To acquire, hold and dispose of personal property for its corporate purposes;
5. (5) To make bylaws for the management and regulation of its affairs;
6. (6) With the consent of the attorney general of the state of West Virginia, to use the facilities of his office, assistants and employees in all legal matters relating to or pertaining to the commission;
7. (7) To appoint officers, agents and employees, and fix their compensation;
8. (8) To make contracts, and to execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by, this article;
9. (9) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the commission that its interests will be best served;
10. (10) To construct a building or buildings on real property, which it may acquire, or which may be owned by the state of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to such consent and approval of the city of Charleston in any case as may be necessary; and, in addition, to acquire or construct a warehouse, including
office space therein, in Kanawha county for the West Virginia alcohol beverage control commissioner, and equip and furnish the same; and to acquire or construct, through lease, purchase, lease-purchase, or bond financing, hospitals or other facilities, buildings, or additions or renovations to buildings as may be necessary for the safety and care of patients, inmates and guests at facilities under the jurisdiction of and supervision of the division of health and at institutions under the jurisdiction of the division of corrections; and to formulate and program plans for the orderly and timely capital improvement of all of said hospitals and institutions and the state capitol buildings; and to construct a building or buildings in Kanawha county to be used as a general headquarters by the division of public safety to accommodate that division's executive staff, clerical offices, technical services, supply facilities and dormitory accommodations; and to develop, improve and expand state parks and recreational facilities to be operated by the division of commerce; and to establish one or more systems or complexes of buildings and projects under control of the commission; and, subject to prior agreements with holders of bonds previously issued, to change the same from time to time, in order to facilitate the issuance and sale of bonds of different series on a parity with each other or having such priorities between series as the commission may determine; and to acquire by purchase, eminent domain or otherwise all real property or interests therein necessary or convenient to accomplish the purposes of this subdivision;

(11) To maintain, construct and operate a project authorized hereunder;

(12) To charge rentals for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved in whole or in part with the proceeds of sale of bonds issued pursuant to this article, subject to and in accordance with such agreements with bondholders as may be made as hereinafter provided: Provided, That on and after the effective date of the amendments to this section, to charge rentals for
the use of all or any part of a project or buildings at any time financed, constructed, acquired, maintained or improved in whole or in part with the proceeds of sale of bonds issued pursuant to this article, subject to and in accordance with such agreements with bondholders as may be made as hereinafter provided, or with any funds available to the state building commission, including, but not limited to, all buildings and property owned by the state of West Virginia or by the state building commission, but no such rentals shall be charged to the governor, attorney general, secretary of state, state auditor, state treasurer, the Legislature and the members thereof, the supreme court of appeals, nor for their offices, agencies, official functions and duties;

(13) To issue negotiable bonds and to provide for the rights of the holders thereof;

(14) To accept and expend any gift, grant or contribution of money to, or for the benefit of, the commission, from the state of West Virginia or any other source for any or all of the purposes specified in this article or for any one or more of such purposes as may be specified in connection with such gift, grant or contribution;

(15) To enter on any lands and premises for the purpose of making surveys, soundings and examinations;

(16) To invest in United States government obligations, on a short-term basis, any surplus funds which the commission may have on hand pending the completion of any project or projects; and

(17) To do all things necessary or convenient to carry out the powers given in this article.

The rights and powers set forth in subdivision (10) of this section shall not be construed as in derogation of any rights and powers now vested in the West Virginia alcohol beverage control commissioner, the department of mental health, the commissioner of public institutions or the department of natural resources.
§5-6-7. Contracts with commission to be secured by bond; competitive bids required for certain contracts.

The commission shall construct a project pursuant to a contract or contracts. Every such contract shall be secured by a bond meeting the requirements of section thirty-nine, article two, chapter thirty-eight of this code.

No contract or contracts for the construction, remodeling, renovation or repair of any building or buildings or any approaches, structures or facilities incidental thereto, or for the equipping and furnishing of any building or buildings, when the anticipated expenditure therefor will exceed the sum of five thousand dollars, shall be entered into except upon the basis of competitive sealed bids: Provided, That effective with the effective date of the amendments to this section, no contract or contracts for the construction, remodeling, renovation or repair of any building or buildings or any approaches, structures or facilities incidental thereto, or for the equipping and furnishing of any building or buildings, when the anticipated expenditure therefor will exceed the sum of ten thousand dollars, shall be entered into except upon the basis of such bids. Such bids shall be obtained by public notice soliciting such bids published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which any such contract is to be performed. The publication shall be completed at least fourteen days prior to the final date for the submission of bids. The commission may in addition to such publication also solicit sealed bids by sending requests by mail to prospective bidders. The contract shall be awarded to the lowest responsible bidder, unless any and all bids are rejected, in which event new bids shall be sought by again publishing notice as aforesaid. Any bid, with the name of the bidder, shall be entered on a record and each record, with the successful bid indicated thereon, shall, after the award of any contract, be open to public inspection in the office of the secretary of the commission.
CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

Article
1. Department of Administration.
2A. Employee Suggestion Award Board.
2. Finance Division.
3. Purchasing Division.
3A. Central Nonprofit Coordinating Agency and Committee for the Purchase of Commodities and Services from the Handicapped.
4. General Services Division.
5. Governor's Mansion Advisory Committee.
6. Information Services and Communications Division.
8. Voluntary Gilding the Dome Check-Off Program.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-1. Definitions.
§5A-1-2. Department of administration and office of secretary; secretary; division of finance and administration abolished; divisions; directors.
§5A-1-5. Reports by secretary.
§5A-1-6. Oath and bond of secretary; bond required for director of the purchasing division; bonds for other directors and employees; cost of bonds.
§5A-1-8. Right of appeal from interference with functioning of agency.

§5A-1-1. Definitions.
1 For the purpose of this chapter:
2 "Commodities" means supplies, material, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of state government.
3 "Contractual services" shall include telephone, telegraph, electric light and power, water and similar services.
4 "Director" means the director of the division referred to in the heading of the article in which the word appears.
5 "Expendable commodities" means those commodities which, when used in the ordinary course of business, will become consumed or of no market value within the period of one year or less.
6 "Nonprofit workshops" means an establishment
(a) where any manufacture or handiwork is carried on, (b) which is operated either by a public agency or by a cooperative or by a nonprofit private corporation or nonprofit association, in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual, (c) which is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market, and (d) which shall be approved, as evidenced by a certificate of approval, by the state board of vocational education, division of vocational rehabilitation. “Printing” means printing, binding, ruling, lithographing, engraving and other similar services. “Removable property” means any personal property not permanently affixed to or forming a part of real estate. “Secretary” means the secretary of administration and, as used in article two of this chapter, the director of the budget. “Spending officer” means the executive head of a spending unit, or a person designated by him. “Spending unit” means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature. §5A-1-2. Department of administration and office of secretary; secretary; division of finance and administration abolished; divisions; directors. The department of administration and the office of secretary of administration are hereby continued in the executive branch of state government. The secretary shall be the chief executive officer of the department and director of the budget and shall be appointed by the governor, by and with the advice and consent of the senate, for a term not exceeding the term of the governor. The office of the commissioner of finance and administration and the division of finance and administration are hereby abolished. All duties and responsibilities of the commissioner of finance and administra-
tion are hereby vested in the secretary of administration. All records, responsibilities, obligations, assets and property, of whatever kind and character, of the division of finance and administration are hereby transferred to the department of administration. The balances of all funds of the division of finance and administration are hereby transferred to the department of administration. The department of administration is hereby authorized to receive federal funds.

The secretary shall serve at the will and pleasure of the governor. The annual compensation of the secretary shall be as specified in section three, article one, chapter five-f of this code.

There shall be in the department of administration a finance division, a general services division, an information services and communications division, an insurance and retirement division, a personnel division and a purchasing division. The insurance and retirement division shall be comprised of the public employees retirement system and board of trustees, the public employees insurance agency and public employees advisory board, the teachers retirement system and teachers' retirement board, and the board of risk and insurance management. Each division shall be headed by a director who may also head any and all sections within that division and who shall be appointed by the secretary. In addition to the divisions enumerated above, there shall also be in the department of administration those agencies, boards, commissions and councils specified in section one, article two, chapter five-f of this code.


The secretary shall have control and supervision of the department of administration and shall be responsible for the work of each of its employees. The secretary shall have such power and authority as specified in section two, article two, chapter five-f of this code. The secretary shall also have the authority to employ such assistants and attorneys as may be necessary for the efficient operation of the department. The secretary, the division heads and the employees of the department

The council of finance and administration is hereby created and shall be composed of ten members, four of whom shall serve ex officio and six of whom shall be appointed as herein provided. The ex officio members shall be the secretary of the department of administration, the attorney general or his designee, the state treasurer or his designee and the state auditor or his designee; such designees being authorized voting ones. From the membership of the Legislature, the president of the Senate shall appoint three senators as members of the council, not more than two of whom shall be members of the same political party, and the speaker of the House of Delegates shall appoint three delegates as members of the council, not more than two of whom shall be members of the same political party. Members of the council appointed by the president of the Senate and the speaker of the House of Delegates shall serve at the will and pleasure of the officer making their appointment. The secretary of administration shall serve as chairman of the council. Meetings of the council shall be upon call of the chairman or a majority of the members thereof. It shall be the duty of the chairman to call no less than four meetings in each fiscal year, one in each quarter, or more often as necessary, and all meetings shall be open to the public. All meetings of the council shall be held at the capitol building in a suitable committee room which shall be made available by the Legislature for such purpose: Provided, That the second quarterly meeting in each fiscal year shall be held in November and shall be a joint meeting with the joint committee on government and finance of the Legislature called jointly by the president of the Senate, speaker of the House of Delegates and secretary of administration.

The council shall serve the department of administration in an advisory capacity for purposes of reviewing the performance of the administrative and fiscal procedures of the state, including the oversight of all federal funds, and shall have the following duties:
(1) To advise with the secretary in respect to matters of budgetary intent and efficiency, including budget bill and budget document detail and format;

(2) To advise with the secretary concerning such studies of government and administration concerning fiscal policy as it may consider appropriate;

(3) To advise with the secretary in the preparation of studies designed to provide long-term capital planning and finance for state institutions and agencies; and

(4) To advise with the secretary in respect to the application for, and receipt and expenditure of, anticipated or unanticipated federal funds.

The appointed, non-ex officio members of the council shall be entitled to receive such compensation and reimbursement for expenses in connection with performance of their duties, during interim periods, if not otherwise receiving the same for such identical periods, as is authorized by the applicable sections of article two-a, chapter four of the code in respect to performance of duties either within the state or, if deemed necessary, out of state. Such compensation and expenses shall be incurred and paid only after approval by the joint committee on government and finance.

§5A-1-5. Reports by secretary.

The secretary shall make an annual report to the governor concerning the conduct of the department and the administration of the state finances. He shall also make such other reports as the governor may require.

§5A-1-6. Oath and bond of secretary; bond required for director of the purchasing division; bonds for other directors and employees; cost of bonds.

The secretary, before entering upon the duties of his office, shall take and subscribe to the oath prescribed by Section 5, Article IV of the constitution of West Virginia. Notwithstanding any other provisions to the contrary, the secretary shall execute a bond in the penalty of one hundred thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, approved by the governor, in form prescribed by the attorney general and conditioned upon
the faithful performance of his duties and the account-
ing for all money and property coming into his hands
by virtue of his office. The oath and bond shall be filed
with the secretary of state.

The director of the purchasing division shall execute
a bond in the penalty of one hundred thousand dollars
and any person employed as a state buyer in accordance
with article three of this chapter shall execute a bond
in the penalty of fifty thousand dollars, payable to the
state of West Virginia, with a corporate bonding or
surety company authorized to do business in this state
as surety thereon, approved by the governor, in form
prescribed by the attorney general and conditioned upon
the faithful performance of his duties under the
provisions of this chapter and all rules and regulations
promulgated pursuant to such chapter and the account-
ing for all money and property coming into his hands
by virtue of his office or position. The bonds shall be
filed with the secretary of state. In lieu of separate
bonds for state buyers, a blanket surety bond may be
obtained. The other division directors and all other
employees of the department shall be covered by bonds
in cases where the secretary thinks it necessary, which
bonds shall be in the penalty prescribed by the secretary
and shall be filed with the secretary of state.

The cost of all such surety bonds shall be paid from
funds appropriated to the department of administration.


The powers and duties vested in the secretary may be
delegated by him to his assistants and employees, but
the secretary shall be responsible for all official acts of
the department.

§5A-1-8. Right of appeal from interference with func-
tioning of agency.

Upon occasion of a showing that the application of the
authority vested under the provisions of this chapter
may interfere with the successful functioning of any
department, institution or agency of the government,
such department, institution or agency may have the
right of appeal to the governor for review of the case
and the decision or conclusion of the governor shall
govern in such cases.

ARTICLE 1A. EMPLOYEE SUGGESTION AWARD BOARD.

§5A-1A-1. Employee suggestion award program continued.

There is hereby continued an employee suggestion
award program within the department of administra-
tion for employees of state government. Under this
program cash or honorary awards may be made to state
employees whose adopted suggestions will result in
substantial savings or improvement in state operations.

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

There is hereby continued an employee suggestion
award board which shall be composed of the secretary
of administration or his designee, the secretary of the
department of commerce, labor and environmental
resources or his designee, the president of the Senate or
his designee, the speaker of the House of Delegates or
his designee, one member of the House of Delegates to
be appointed by the speaker of the House of Delegates,
one member of the Senate to be appointed by the
president of the Senate, and the secretary of the
department of health and human resources or his
designee. The terms of the members of the board shall
be consistent with the terms of the offices to which they
have been elected or appointed.

§5A-1A-3. Duties of board; excluded employees.

It shall be the duty of the board to adopt rules
governing its proceedings, to elect a chairman and
secretary, to keep permanent and accurate records of its
proceedings, to establish criteria for making awards, to
adopt rules and regulations to carry out the provisions
of this article, and to approve each award made.
In establishing criteria for making awards, the board may exclude certain levels of positions from participation in the program, but in no event shall:

(1) The following levels of management, within the spending unit where the adopted suggestion will result in substantial savings, be eligible to receive cash awards under the program:

(a) Governor's staff, departmental secretaries and their equivalent;

(b) Assistant or deputy secretary, assistant to secretary, commissioner, assistant or deputy commissioner, major fiscal and administrative policy departmental staff or their equivalent;

(c) Director or division chief, including the division chief or director of a statewide program, and which includes a chief of a division supervising several service units or their equivalent;

(d) Assistant to director or division chief, section chief or head of major departmental function or their equivalent; and

(2) The following levels of management, not within the spending unit where the adopted suggestion will result in substantial savings, be eligible to receive cash awards under the program:

(a) Governor's staff, departmental secretaries and their equivalent;

(b) Assistant or deputy secretary, assistant to secretary, commissioner, assistant or deputy commissioner.

§5A-1A-4. Awards.

The maximum cash award approved shall be limited to twenty percent of the first year's estimated savings, as established by the head of the affected spending unit, or ten thousand dollars, whichever is less. Any cash awards approved by the board shall be charged by the head of the affected spending unit against the appropriation item or items to which such estimated savings apply.
§5A-1A-5. State ownership of suggestions.

The state shall become the sole owner of all suggestions accepted by the employee suggestion award board. The acceptance of a suggestion by the board shall constitute an agreement by the employee and the state that all claims pertaining to the suggestion, immediate and future, on the state of West Virginia are waived.

ARTICLE 2. FINANCE DIVISION.

§5A-2-1. Finance division created; director; sections; powers and duties.
§5A-2-2. General powers and duties of secretary as director of budget.
§5A-2-3. Requests for appropriations; copies to legislative auditor.
§5A-2-5. Form of requests.
§5A-2-6. Information concerning state finances.
§5A-2-8. Examination of requests for appropriations.
§5A-2-9. Appropriation requests by other than spending units.
§5A-2-11. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.
§5A-2-12. Submission of expenditure schedules; contents; submission of information on unpaid obligations; copies to legislative auditor.
§5A-2-13. Examination and approval of expenditure schedules; amendments; copies to legislative auditor.
§5A-2-15. Requests for quarterly allotments; approval or reduction by governor.
§5A-2-16. Limitation on expenditures.
§5A-2-17. Transfers between items of appropriation of executive, legislative and judicial branches.
§5A-2-18. Expenditure of excess in collections; notices to auditor and treasurer.
§5A-2-19. Reports by spending units; copies to legislative auditor.
§5A-2-22. Reduction of appropriations—Pro rata reduction of appropriations from other funds.
§5A-2-23. Approval of secretary of requests for changes and receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished to secretary and legislative auditor; and consolidated report of federal funds.
§5A-2-25. System of accounting to be certified to legislative auditor.
§5A-2-27. Expenditure of appropriations—Other than for purchases of commodities.


§5A-2-29. Expenditure of appropriations—Payment of personal services.


§5A-2-31. Appropriations for officers, commissions, boards or institutions without office at capitol.

§5A-2-32. Submission of requests, amendments, reports, etc., to legislative auditor; penalty for noncompliance.

§5A-2-1. Finance division created; director; sections; powers and duties.

1 The finance division of the department of administration is hereby created. The division shall be under the supervision and control of a director, who shall be appointed by the secretary. There shall be in the finance division, an accounting section and a budget section. The accounting section shall have the duties conferred upon it by this article and by the secretary, including, but not limited to, general financial accounting, payroll, accounts payable and accounts receivable for the department of administration.

11 The budget section shall act as staff agency for the governor in the exercise of his powers and duties under Section 51, Article VI of the state constitution, and shall exercise and perform the other powers and duties conferred upon it by this article.

§5A-2-2. General powers and duties of secretary as director of budget.

1 The secretary, under the immediate supervision of the governor, shall have the power and duty to:

3 (1) Exercise general supervision of, and make rules and regulations for, the government of this division;

5 (2) Administer the budget in accordance with this article;

7 (3) Serve the governor in the consideration of requests for appropriations and the preparation of the budget document;

10 (4) Make such investigations and submit such reports as the governor may require;
12 (5) Make a continuous study of state expenditures and eligibility for federal matching dollars and make such recommendations to the governor for the more economical use of state funds as he/she shall find practicable;
13 (6) Render assistance to spending officers with respect to the fiscal affairs of spending units; and
14 (7) Exercise such other powers as are vested in him by this article, or which may be appropriate to the discharge of his duties.

§5A-2-3. Requests for appropriations; copies to legislative auditor.

1 The spending officer of each spending unit, other than the legislative and the judicial branches of state government, shall, on or before the first day of September of each year, submit to the secretary a request for appropriations for the fiscal year next ensuing. On or before the same date, the spending officer shall also transmit two copies of such request to the legislative auditor for the use of the finance committees of the Legislature.

If the spending officer of any spending unit fails to transmit to the legislative auditor two copies of the request for appropriations within the time specified in this section, the legislative auditor shall notify the secretary, auditor and treasurer of such failure, and thereafter no funds appropriated to such spending unit shall be encumbered or expended until the spending officer thereof has transmitted such copies to the legislative auditor.

If a spending officer submits to the secretary an amendment to the request for appropriations, two copies of such amendment shall forthwith be transmitted to the legislative auditor.

Notwithstanding any provision in this section to the contrary, the state superintendent of schools shall, on or before the fifteenth day of December of each year, submit to the secretary a request for appropriations for the fiscal year next ensuing for state aid to schools and two copies of such request to the legislative auditor for the use of the finance committees of the Legislature. The
30 request for appropriation shall be accompanied with
31 copies of certified enrollment and employee lists from
32 all county superintendents for the current school year.
33 If certified enrollment and employee lists are not
34 available to the state superintendent from any of the
35 county school boards, the state superintendent shall
36 notify those school boards and no funds shall be
37 expended for salary or compensation to their county
38 superintendent until the certified lists of enrollment and
39 employees are submitted.

1 A request for an appropriation for a spending unit
2 shall specify and itemize in written form:
3 (1) A statement showing the amount and kinds of
4 revenue and receipts collected for use of the spending
5 agency during the next preceding fiscal year and
6 anticipated collections for the fiscal year next ensuing;
7 (2) A statement by purposes and objects of the amount
8 of appropriations requested for the spending unit
9 without deducting the amount of anticipated collections
10 of special revenue, federal funds or other receipts;
11 (3) A statement showing the actual expenditures of
12 the spending unit for the preceding year and estimated
13 expenditures for the current fiscal year itemized by
14 purposes and objects, including those from regular and
15 supplementary appropriations, federal funds, private
16 contributions, transfers, allotments from an emergency
17 or contingent fund and any other expenditures made by
18 or for the spending unit;
19 (4) A statement showing the number, classification
20 and compensation of persons employed by the spending
21 unit distinguishing between regular, special and casual
22 employees during the preceding fiscal year and during
23 the current fiscal year. The statement shall show the
24 personnel requirements in similar form for the ensuing
25 fiscal year for which appropriations are requested;
26 (5) A statement showing in detail the purposes for
27 which increased amounts of appropriations, if any, are
28 requested, and giving a justification statement for the
expenditure of the increased amount. A construction or other improvement request shall show in detail the kind and scope of construction or improvement requested;

(6) A statement of money claims against the state arising out of the activities of the spending unit; and

(7) Such other information as the secretary may request.

§5A-2-5. Form of requests.

The secretary shall specify the form and detail of itemization of requests for appropriations and statements to be submitted by a spending unit: Provided, That such request for appropriations must include at a minimum the information required by section four of this article. The secretary shall furnish blank forms for this purpose.

§5A-2-6. Information concerning state finances.

The secretary shall ascertain for the preceding year and as estimated for the current fiscal year:

(1) The condition of each of the funds of the state;

(2) A statement of all revenue collections both general and special; and

(3) Such other information relating to the finances of the state as the governor may request.


The governor shall transmit to the secretary the appropriations required by law for the judiciary for the fiscal year next ensuing and which have been certified to the governor by the auditor. The auditor shall certify such appropriations to the governor in accordance with Section 51, Article VI of the state constitution, on or before the first day of September of each year.

§5A-2-8. Examination of requests for appropriations.

The secretary shall examine the requests of a spending unit with respect to requested appropriations, itemization, sufficiency of justification statements, and accuracy and completeness of all other information which the spending officer is required to submit.
6 If the secretary finds a request, report, or statement
7 of a spending unit inaccurate, incomplete or inadequate,
8 he shall consult with the spending officer of the unit and
9 require the submission of the requests in proper form
10 and content. The secretary shall assist spending officers
11 in the preparation of their requests.

§5A-2-9. Appropriation requests by other than spending units.

1 A person or organization, other than a spending
2 officer, who desires to request a general appropriation
3 in the state budget, shall submit his request to the
4 secretary on or before the first day of September of each
5 year. The request shall be in the form prescribed by the
6 secretary and shall be accompanied by a justification
7 statement.


1 The secretary shall supervise and control the expenditure of appropriations made by the Legislature excluding those made to the Legislature and those made to the judicial branch of the state government. The expenditure of an appropriation made by the Legislature except that made for the Legislature itself and the judicial branch of state government shall be conditioned upon compliance by the spending unit with the provisions of this article. An appropriation made by the Legislature except that made for the Legislature itself and the judicial branch of state government shall be expended only in accordance with this article.

§5A-2-11. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.

1 Prior to the beginning of each fiscal year the secretary shall estimate the revenue to be collected month by month by each classification of tax for that fiscal year as it relates to the official estimate of revenue for each tax for that fiscal year and the secretary shall certify this estimate to the governor and the legislative auditor by the first day of July for that fiscal year.
The secretary shall ascertain the collection of the revenue of the state and shall determine for each month of the fiscal year the proportion which the amount actually collected during a month bears to the collection estimated by him for that month. The secretary shall certify to the governor and the legislative auditor, as soon as possible after the close of each month, and not later than the fifteenth day of each month, and at such other times as the governor or legislative auditor may request, the condition of the state revenues and of the several funds of the state and the proportion which the amount actually collected during the preceding month bears to the collection estimated by him for that month. The secretary shall include in this certification the same information previously certified for prior months in each fiscal year. For the purposes of this section, the secretary shall have the authority to require all necessary estimates and reports from any spending unit of the state government.

If the secretary fails to certify to the governor and the legislative auditor the information required by this section within the time specified herein, the legislative auditor shall notify the auditor and treasurer of such failure, and thereafter no funds appropriated to the department of administration shall be expended until the secretary has certified the information required by this section.

§5A-2-12. Submission of expenditure schedules; contents; submission of information on unpaid obligations; copies to legislative auditor.

Prior to the beginning of each fiscal year, the spending officer of a spending unit shall submit to the secretary a detailed expenditure schedule for the ensuing fiscal year. The schedule shall be submitted in such form and at such time as the secretary may require.

The schedule shall show:

(1) A proposed monthly rate of expenditure for amounts appropriated for personal services;
(2) Each and every position budgeted under personal services for the next ensuing fiscal year, with the monthly salary or compensation of each such position;

(3) A proposed quarterly rate of expenditure for amounts appropriated for employee benefits, current expenses, equipment and repairs and alterations classified by a uniform system of accounting as called for in section twenty-five of this article for each item of every appropriation;

(4) A proposed yearly plan of expenditure for amounts appropriated for buildings and lands; and

(5) A proposed quarterly plan of receipts itemized by type of revenue.

The secretary may accept a differently itemized expenditure schedule from a spending unit to which the above itemizations are not applicable.

The secretary shall consult with and assist spending officers in the preparation of expenditure schedules.

Within fifteen days after the end of each month of the fiscal year, the head of every spending unit shall certify to the legislative auditor the status of obligations and payments of the spending unit for amounts of employee benefits, including, but not limited to, obligations and payments for social security withholding and employer matching, public employees insurance premiums and public employees retirement and teachers retirement systems.

When a spending officer submits an expenditure schedule to the secretary as required by this section, the spending officer shall at the same time transmit a copy thereof to the legislative auditor and the joint committee on government and finance or its designee. If a spending officer of a spending unit fails to transmit such copy to the legislative auditor on or before the beginning of the fiscal year, the legislative auditor shall notify the secretary, auditor and treasurer of such failure, and thereafter no funds appropriated to such spending unit shall be encumbered or expended until the spending officer thereof has transmitted such copy to the legislative auditor.
In the event the legislative auditor determines from certified reports or from other sources that any spending unit is not making all payments and transfers for employee benefits from funds appropriated for that purpose, the legislative auditor shall notify the secretary of administration, auditor and treasurer of such determination and thereafter no funds appropriated to such spending unit shall be encumbered or expended for the salary or compensation to the head of the spending unit until the legislative auditor shall determine that such payments or transfers are being made on a timely basis.

§5A-2-13. Examination and approval of expenditure schedules; amendments; copies to legislative auditor.

The secretary shall examine the expenditure schedule of each spending unit, and if he finds that it conforms to the appropriations made by the Legislature, the requirements of this article, and is in accordance with sound fiscal policy, he shall approve the schedule.

The expenditure of the appropriations made to a spending unit shall be only in accordance with the approved expenditure schedule unless the schedule is amended with the consent of the secretary, or unless appropriations are reduced in accordance with the provisions of sections twenty to twenty-three, inclusive, of this article. The spending officer of a spending unit shall transmit to the legislative auditor a copy of each and every requested amendment to such schedule at the same time that such requested amendment is submitted to the secretary. The secretary shall send to the legislative auditor copies of any schedule amended with the secretary’s approval.


The secretary, with the approval of the governor, may require that an expenditure schedule provide for a reserve for emergencies out of the total amount appropriated to the spending unit. The amount of the reserve
shall be determined by the secretary in consultation with the spending officer.

§5A-2-15. Requests for quarterly allotments; approval or reduction by governor.

At least thirty days prior to the beginning of each quarter of the fiscal year, each spending officer shall submit to the secretary a request for an allotment of public funds sufficient to operate the unit during the ensuing quarter in accordance with the approved expenditure schedule.

The secretary shall examine the requests and, if he finds that the amounts requested are in accordance with the approved expenditure schedules and are in accordance with sound fiscal policy, he shall submit the requests to the governor. The secretary shall also submit a summary statement showing the amounts expended under the budget for each preceding quarter of the fiscal year and the total amount requested for allotment during the ensuing quarter.

The governor shall consider the amount of requests for allotment and the collection of revenues. If the governor finds that the collection of revenue warrants the expenditure of the amount requested in the allotment, he shall approve the allotment of funds for the ensuing quarter and send copies of the requests to the legislative auditor after approval. If the governor finds that the collection of revenue does not warrant the allotment of the requested amount, he may reduce the amount of allotments pending the collection of sufficient revenue.

§5A-2-16. Limitation on expenditures.

The expenditures of a spending unit during a quarter of the fiscal year shall not exceed the amount of the approved allotment, unless the governor approves the expenditure of a larger amount. Any amounts remaining unexpended at the close of the quarter shall be available for reallocation and expenditure during any succeeding quarter of the same fiscal year.

§5A-2-17. Transfers between items of appropriation of executive, legislative and judicial branches.

Notwithstanding any other provision of law to the
contrary, there shall be no transfer of amounts between
items of appropriations nor shall moneys appropriated
for any particular purpose be expended for any other
purpose by any spending unit of the executive, legisla-
tive or judicial branch except as hereinafter provided:

(1) Any transfer of amounts between items of appro-
priations for the executive branch of state government
shall be made only as specifically authorized by the
Legislature.

(2) Any transfer of amounts between items of appro-
priations for the legislative branch of state government
shall be made only pursuant to the joint rules adopted
by such body and any amendments thereto, as certified
to the state auditor, the state treasurer and the
legislative auditor.

(3) Any transfer of amounts between items of appro-
priations for the judicial branch of state government
shall be made only pursuant to rules adopted by the
supreme court of appeals and any amendments thereto,
as certified to the state auditor, the state treasurer and
the legislative auditor.

§5A-2-18. Expenditure of excess in collections; notices to
auditor and treasurer.

If the amount actually collected by a spending unit
exceeds the amount which it is authorized to expend
from collections, the excess in collections shall be set
aside in a special surplus fund for the spending unit.
Expenditures from this fund shall be made only in
accordance with the following procedure:

The spending officer shall submit to the secretary:

(1) A plan of expenditure showing the purposes for
which the surplus is to be expended; and

(2) A justification statement showing the reasons why
the expenditure is necessary and desirable.

The secretary shall submit the request to the governor
with his recommendation.

If the governor approves the plan of expenditure and
15 justification statement, and is satisfied that the expenditure is required to defray the additional cost of the service or activity of the spending unit, and that the expenditure is in accordance with sound fiscal policy, he/she may authorize the use of the surplus during the current fiscal year. Notices of such authorization shall be sent to the state auditor, the state treasurer and the legislative auditor.

23 An expenditure from a special surplus fund without the authorization of the governor, or other than in accordance with this section, shall be an unlawful use of public funds.

§5A-2-19. Reports by spending units; copies to legislative auditor.

1 A spending unit shall submit to the secretary such reports with respect to the work and expenditures of the unit as the secretary may request for the purposes of this article. Upon receipt thereof, the secretary shall immediately send copies of all such reports to the legislative auditor.


1 The governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article.


1 If the governor determines that the amounts, or parts thereof, appropriated from the general revenue cannot be expended without creating an overdraft or deficit in the general fund, he may instruct the secretary to reduce equally and pro rata all appropriations out of general revenue in such a degree as may be necessary to prevent an overdraft or a deficit in the general fund.

§5A-2-22. Reduction of appropriations—Pro rata reduction of appropriations from other funds.

1 The governor in the manner set forth in section twenty-one may reduce appropriations from:
Ch. 2] ADMINISTRATION 37

3 (1) Funds supported by designated taxes or fees; and

4 (2) Fees or other collections set aside for the support
5 of designated activities or services.

6 Each fund and each fee or collection account shall be
7 treated separately, but appropriations from the same
8 fund or account shall be treated equally and reduced pro
9 rata.

§5A-2-23. Approval of secretary of requests for changes
1 and receipt and expenditure of federal
2 funds by state agencies; copies or sufficient
3 summary information to be furnished to
4 secretary and legislative auditor; and con-
5 solidated report of federal funds.

1 Every agency of the state government when making
2 requests or preparing budgets to be submitted to the
3 federal government for funds, equipment, material or
4 services, the grant or allocation of which is conditioned
5 upon the use of state matching funds, shall have such
6 request or budget approved in writing by the secretary
7 before submitting it to the proper federal authority. At
8 the time such agency submits such a request or budget
9 to the secretary for approval, it shall send a copy thereof
10 to the legislative auditor. When such federal authority
11 has approved the request or budget, the agency of the
12 state government shall resubmit it to the secretary for
13 recording before any allotment or encumbrance of the
14 federal funds can be made and the secretary shall send
15 a copy of the federally approved request or budget to
16 the legislative auditor. Whenever any agency of the state
17 government shall receive from any agency of the federal
18 government a grant or allocation of funds which do not
19 require state matching, the state agency shall report to
20 the secretary and the legislative auditor for their
21 information the amount of the federal funds so granted
22 or allocated.

23 Unless contrary to federal law, any agency of state
24 government, when making requests or preparing
budgets to be submitted to the federal government for 
funds for personal services, shall include in such request 
or budget the amount of funds necessary to pay for the 
costs of any fringe benefits related to such personal 
service. For the purposes of this section, "fringe 
benefits" means any employment benefit granted by the 
state which involves state funds, including, but not 
limited to, contributions to insurance, retirement and 
social security, and which does not affect the basic rate 
of pay of an employee.

In addition to the other requirements of this section, 
the secretary shall, as soon as possible after the end of 
each fiscal year but no later than the first day of October 
of each year, submit to the governor and the legislative 
auditor a consolidated report which shall contain a 
detailed itemization of all federal funds received by the 
state during the preceding and current fiscal years, as 
well as those scheduled or anticipated to be received 
during the next ensuing fiscal year. Such itemization 
shall show: (a) Each spending unit which has received 
or is scheduled or expected to receive federal funds in 
either of such fiscal years, (b) the amount of each 
separate grant or distribution received or to be received, 
and (c) a brief description of the purpose of every such 
grant or other distribution, with the name of the federal 
agency, bureau or department making such grant or 
distribution: Provided, That it shall not be necessary to 
include in such report an itemization of federal revenue 
sharing funds deposited in and appropriated from the 
revenue sharing trust fund, or federal funds received for 
the benefit of the division of highways of the department 
of transportation.

The secretary is authorized and empowered to obtain 
from the spending units any and all information 
necessary to prepare such report.

Notwithstanding the other provisions of this section 
and in supplementation thereof, the Legislature hereby 
determines that the department of administration and 
its secretary need to be the single and central agency 
for receipt of information and documents in respect of 
applications for, and changes, receipt and expenditure
of, federal funds by state agencies. Every agency of state
government, when making application for federal funds
in the nature of a grant, allocation or otherwise; when
amending such applications or requests; when in receipt
of such federal funds; or when undertaking any expen-
diture of federal funds; in all such respective instances,
shall provide to the secretary of administration docu-
ment copies or sufficient summary information in
respect thereof as to enable the secretary to provide
approval in writing for such activity in respect to the
federal funds, and such state agencies shall, at the same
time, provide such a document copy or sufficient
summary information report to the legislative auditor’s
office in order to permit continuing meaningful cooper-
ative overview of federal funds and their use budgetar-
ily and in establishing state fiscal policies.


It is the intent of this section to establish a centralized
accounting system for the offices of the auditor,
treasurer, secretary of administration and each spend-
ing unit of state government to provide more accurate
and timely financial data and increase public
accountability.

Notwithstanding any provision of this code to the
contrary, the secretary shall develop and implement a
new centralized accounting system for the planning,
reporting and control of state expenditures in accor-
dance with generally accepted accounting principles to
be used by the auditor, treasurer, secretary and all
spending units. The accounting system shall provide for
adequate internal controls, accounting procedures,
recording income collections, systems operation proce-
dures and manuals, and periodic and annual general
purpose financial statements, as well as provide for the
daily exchange of needed information among users.

The financial statements shall be audited annually by
outside independent certified public accountants, who
shall also issue an annual report on federal funds in
compliance with federal requirements.

The secretary shall implement the centralized ac-
counting system no later than the thirty-first day of
December, one thousand nine hundred ninety-three,
and, after approval of the system by the governor, shall
require its use by all spending units. The auditor,
treasurer, secretary and every spending unit shall
maintain their computer systems and data files in a
standard format in conformity with the requirements of
the centralized accounting system. Any system changes
must be approved in advance of such change by the
secretary. The auditor, treasurer and secretary shall
provide on-line interactive access to the daily records
maintained by their offices.

§5A-2-25. System of accounting to be certified to legisla-
tive auditor.

The secretary shall certify the system of accounting
and reporting installed pursuant to the provisions of this
article, and any changes made therein, to the legislative
auditor.


The expenditure of an appropriation made by the
Legislature shall be conditioned upon compliance by the
spending unit with the following provisions of this
article.

§5A-2-27. Expenditure of appropriations—Other than for
purchases of commodities.

A requisition for expenditure, other than an order for
the purchase of commodities, shall be submitted as
follows:

(1) The spending officer shall prepare and submit to
the director a requisition showing the amount, purpose,
and appropriation from which the expenditure is
requested;

(2) The director shall examine the requisition and
determine whether the amount is within the quarterly
allotment, is in accordance with the approved expendi-
ture schedule, and otherwise conforms to the provisions
of this article;

(3) If the director approves the requisition, he/she
shall encumber the proper account in the amount of the requisition and shall transmit the requisition to the auditor for disbursement in accordance with law; and

(4) If the director disapproves the requisition, he/she shall return it to the spending unit with a statement of his reasons.


If a requisition is a request for a purchase of commodities, the spending unit shall transmit the requisition to the budget section for the purpose of ascertaining whether it conforms to the expenditure schedule. If it does not so conform, the requisition shall be returned by the budget section to the spending unit. If it conforms, the budget section shall transmit the requisition to the purchasing division for purchase in accordance with article three of this chapter. When a copy of the purchase order issued pursuant thereto is received from the purchasing division by the director in accordance with the provisions of section fourteen, article three of this chapter, the director shall ascertain whether the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order, and, if so, shall encumber the proper account and so certify the fact to the purchasing division, and, if not, shall notify the purchasing division which, upon receipt of such notification, shall return the requisition to the spending unit.

§5A-2-29. Expenditure of appropriations—Payment of personal services.

A requisition for the payment of personal services shall upon receipt by the director be checked against the personnel schedule of the spending unit making the requisition. The director shall approve a requisition for personal services only if the amounts requested are in accordance with the personnel schedule of the spending unit.

1. The provisions of sections twenty-nine and thirty of this article shall not apply to the expenditure of amounts appropriated for the use of the Legislature or for the judiciary. In the case of appropriations made for the Legislature, the clerk of the House of Delegates, or the clerk of the Senate, as the case may be, shall present his requisition directly to the auditor. In the case of appropriations made for the judiciary, the clerk of the court shall present his requisition or claim directly to the auditor. In the case of appropriations made for criminal charges, the clerk or the proper officer shall present his claim directly to the auditor.

§5A-2-31. Appropriations for officers, commissions, boards or institutions without office at capitol.

1. All appropriations now or hereafter made for officers, commissions, boards or institutions, public or private, other than state institutions of higher education, state charitable institutions, state hospitals and sanatoriums and state penal and correctional institutions, not having an office at the state capitol, shall, unless otherwise provided by law, be expended on requisitions of such officer, commission, board or institution, after approval by the secretary of the department of administration.

§5A-2-32. Submission of requests, amendments, reports, etc., to legislative auditor; penalty for noncompliance.

1. The provisions of sections three, eleven, twelve, thirteen, nineteen, twenty-three and twenty-five of this article requiring the secretary or the spending officer of the spending units, as the case may be, to supply copies of the documents specified therein to the legislative auditor, shall be strictly adhered to by all such persons. Any failure by any person to do so shall be a misdemeanor, and, upon conviction thereof, such person shall be fined the sum of one thousand dollars. Such penalty shall be in addition to other penalties provided elsewhere in this article and other remedies provided by law.
ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article.
§5A-3-1a. Prescription drug products.
§5A-3-2. Books and records of director.
§5A-3-3. Powers and duties of director of purchasing.
§5A-3-4. Rules and regulations of director.
§5A-3-5. Purchasing section standard specifications—Promulgation and adoption by director; applicable to all purchases.
§5A-3-6. Purchasing section standard specifications—Advisers from spending units.
§5A-3-7. Director to advise with heads of state and other institutions producing commodities, services and printing.
§5A-3-8. Facilities of division available to local governmental bodies.
§5A-3-9. Examination and testing of purchases; report required.
§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.
§5A-3-11. Purchasing in open market on competitive bids; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids, and exception.
§5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false affidavits, etc.; penalties.
§5A-3-13. Contracts to be approved as to form; filing.
§5A-3-14. Copies of purchase orders sent to finance division; certificates required before contracts awarded.
§5A-3-15. Emergency purchases in open market.
§5A-3-16. Special fund; purposes; how composed.
§5A-3-17. Purchases or contracts violating article void; personal liability.
§5A-3-18. Substituting for commodity bearing particular trade name or brand.
§5A-3-19. Purchases from federal government and other sources.
§5A-3-20. Spending units to submit lists of expendable commodities.
§5A-3-21. Contracts for public printing and paper for spending units; printing plants at institutions.
§5A-3-22. Legislative printing.
§5A-3-23. Publication of reports of supreme court of appeals.
§5A-3-24. Publication of departmental reports; uniform standards; limiting number of publications; requiring division to perform printing and binding.
§5A-3-25. Printing, binding and stationery to be paid from current expense appropriations.
§5A-3-26. Custodian of reports and acts; delivery to state law librarian for distribution; sale.
§5A-3-27. Director to establish central duplicating office; exemption of particular spending units; contracts for duplicating.
§5A-3-28. Financial interest of secretary, etc.; receiving reward from interested party; penalty; application of bribery statute.
§5A-3-29. Penalty for violation of article.
§5A-3-30. Obtaining money and property under false pretenses or by fraud from state; penalties.

§5A-3-31. Corrupt combinations, collusions or conspiracies prohibited; penalties.

§5A-3-32. Power of director to suspend right to bid; notice of suspension.

§5A-3-33. Review of suspension by secretary.

§5A-3-34. Authority over inventories and property.

§5A-3-35. Submission of annual inventories.

§5A-3-36. Inventory of removable property; maintenance and repair of office furniture, machinery and equipment.

§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; exceptions.

§5A-3-37a. Preference for resident vendors; exceptions; reciprocal preference.

§5A-3-38. Leases for space to be made in accordance with article; exception.

§5A-3-39. Leasing of space by secretary; delegation of authority.

§5A-3-40. Selection of grounds, etc.; acquisition by contract or lease; long-term leases; requiring approval of secretary for permanent changes.

§5A-3-41. Leases and other instruments for space signed by secretary or director; approval as to form; filing.

§5A-3-42. Leasing for space rules and regulations.

§5A-3-43. State agency for surplus property created.

§5A-3-44. Authority and duties of state agency for surplus property.

§5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.

§5A-3-46. Warehousing, transfer, etc., charges.

§5A-3-47. Department of agriculture and other agencies exempted.

§5A-3-48. Travel rules and regulations; exceptions.

§5A-3-49. Central motor pool for state-owned vehicles and aircraft.

§5A-3-50. Acquiring and disposing of vehicles and aircraft.

§5A-3-51. Maintenance and service to vehicles and aircraft.

§5A-3-52. Special fund for travel management created.

§5A-3-53. Enforcement of travel management regulations.

§5A-3-54. Payment of legitimate uncontested invoices; interest on late payments.

§5A-3-1. Division created; purpose; director; applicability of article.

1 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.

5 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 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.

§5A-3-la. Prescription drug products.

In addition to other provisions of this article, the division is authorized, on behalf of the public employees insurance agency, the schools of medicine of the state colleges and universities, the department of vocational rehabilitation and the department of health and human resources, to negotiate and enter into agreements directly with manufacturers and distributors whose prescription drug products are sold in the state for sole-source and multiple-source drugs to be paid for under a state program for eligible recipients. Such agreements shall provide for a rebate of a negotiated percentage of the total product cost to be paid by the manufacturer or distributor of a specific product. Each agency is authorized to establish, either singularly or together with other agencies, a drug formulary.

Prescription drug products are included in the drug formulary only upon completion of the application to and approval of the division. Those products for which a rebate is successfully negotiated are automatically included in the drug formulary for a period of time coterminous with the negotiated rebate.

If there has been a failure to negotiate or renew a rebate agreement for a specific prescription drug product, the pharmaceutical manufacturer of that product shall disclose to the division its most favorable pricing arrangements available to state and nonstate government purchasers. If the division determines that
the product needs to be included in the drug formulary, with the approval of the agency the division shall establish the amount to be reimbursed for the product based upon the price information provided by the manufacturer. The determination as to whether a product should be included in the drug formulary is based on the product's efficiency, cost, medical necessity and safety. Any rebate returns, as a result of the provisions of this section regarding prescription drugs, shall be deposited in the general revenue fund.

It is expressly recognized that no other entity may interfere with the discretion and judgment given to the single state agency that administers the state's medicaid program. Therefore, the department of health and human resources is authorized to negotiate rebates as provided for in this section.

§5A-3-2. Books and records of director.

The director shall keep in his offices accurate books, accounts and records of all transactions of his division, and such books, accounts and records shall be public records, and shall at all proper times be available for inspection by any taxpayer of the state.

§5A-3-3. Powers and duties of director of purchasing.

The director, under the direction and supervision of the secretary, shall be the executive officer of the purchasing division and shall have the power and duty to:

(1) Direct the activities and employees of the purchasing division;

(2) Ensure that the purchase of or contract for commodities and printing shall be based, whenever possible, on competitive bid;

(3) Purchase or contract for, in the name of the state, the commodities and printing required by the spending units of the state government;

(4) Apply and enforce standard specifications established in accordance with section five of this article as hereinafter provided;
(5) Transfer to or between spending units or sell commodities that are surplus, obsolete or unused as hereinafter provided;

(6) Have charge of central storerooms for the supply of spending units;

(7) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided;

(8) Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that such vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;

(9) Examine the provisions and terms of every contract entered into for and on behalf of the state of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve each such contract as to such provisions and terms; and the duty of examination and approval herein set forth does not supersede the responsibility and duty of the attorney general to approve such contracts as to form: Provided, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the division of highways of the department of transportation: Provided, however, That the provisions of this subdivision do not apply in any respect whatever to contracts entered into by the university of West Virginia board of trustees or by the board of directors of the state college system, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision; and

(10) Assure that the specifications and commodity descriptions in all “requests for quotations” are prepared so as to permit all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or vendor. If the director determines that any such specifications or
descriptions as written favor a particular brand or vendor or if it is decided, either before or after the bids are opened, that a commodity having different specifications or quality or in different quantity can be bought, the director may rewrite the "requests for quotations" and the matter shall be rebid.

§5A-3-4. Rules and regulations of director.

(a) The director shall adopt and amend rules and regulations to:

(1) Authorize a spending unit to purchase specified commodities directly and prescribe the manner in which such purchases shall be made;

(2) Authorize, in writing, a spending unit to purchase commodities in the open market for immediate delivery in emergencies, define such emergencies and prescribe the manner in which such purchases shall be made and reported to the director; and for the purposes mentioned in subdivision (1) and this subdivision (2), the head of any spending unit, or the financial governing board of any institution, may, with the approval of the director, make requisitions upon the auditor for a sum to be known as an advance allowance account, in no case to exceed five percent of the total of the appropriations for any such spending unit, and the auditor shall draw his warrant upon the treasurer for such accounts; and all such advance allowance accounts shall be accounted for by the head of the spending unit or institution once every thirty days or oftener if required by the state auditor or director;

(3) Prescribe the manner in which commodities shall be purchased, delivered, stored and distributed;

(4) Prescribe the time for making requisitions and estimates of commodities, the future period which they are to cover, the form in which they shall be submitted and the manner of their authentication;

(5) Prescribe the manner of inspecting all deliveries of commodities, and making chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;
(6) Prescribe the amount of deposit or bond to be submitted with a bid or contract and the amount of deposit or bond to be given for the faithful performance of a contract;

(7) Prescribe a system whereby the director shall be required, upon the payment by a vendor of an annual fee established by the director, to give notice to such vendor of all bid solicitations for commodities of the type with respect to which such vendor specified notice was to be given, but no such fee shall exceed the cost of giving the notice to such vendor, nor shall such fee exceed the sum of forty-five dollars per fiscal year, nor shall such fee be charged to persons seeking only reimbursement from a spending unit;

(8) Prescribe that each state contract entered into by the purchasing division shall contain provisions for liquidated damages, remedies, and/or provisions for the determination of the amount or amounts which the vendor shall owe as damages, in the event of default under such contract by such vendor; and

(9) Provide for such other matters as may be necessary to give effect to the foregoing rules and regulations and the provisions of this article.

(b) The director shall also adopt and amend rules and regulations to prescribe qualifications to be met by any person who, on and after the effective date of this section, is to be employed in the purchasing division as a state buyer. Such rules and regulations shall provide that no person shall be so employed as a state buyer unless such person at the time of employment either is (1) a graduate of an accredited college or university or (2) has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise. Those persons now serving as state buyers shall remain subject to the provisions of article six, chapter twenty-nine of this code, and those persons employed as state buyers on and after the effective date of this section shall be subject to the provisions of said article six.
§5A-3-5. Purchasing section standard specifications—
Promulgation and adoption by director; applicable to all purchases.

The director shall promulgate and adopt standard specifications based on scientific and technical data for appropriate commodities, which shall establish the quality to which such commodities to be purchased and services to be contracted for by the state must conform. Standard specifications shall apply to every future purchase of or contract for the commodities described in the specifications. The purchases of no spending unit may be exempt from compliance with the standard specifications so established, but the director, whenever he deems it necessary and advisable, may exempt therefrom the purchase of particular items. The director shall update the standard specifications, as necessary.

§5A-3-6. Purchasing section standard specifications—
Advisers from spending units.

The secretary may from time to time request any official or employee of any spending unit to aid and advise the director in formulating, revising or amending the schedule of standard specifications provided for in section five of this article. Such official or employee shall act at the request of the secretary and shall be entitled to receive his necessary expenses incurred in compliance therewith, but shall receive no additional compensation therefor.

§5A-3-7. Director to advise with heads of state and other institutions producing commodities, services and printing.

The director shall advise with the heads of the various state and other institutions producing commodities, services and printing, with the view to making these articles suitable for the needs of state spending units. Notwithstanding any provision of this code to the contrary, in the event of conflict between state and other institutions producing commodities, services and printing with preference in accordance with the code, the director shall determine which institution shall provide a commodity, service or printing, basing such determi-
nation on quality, price and the efficient and economical operation of state government.

§5A-3-8. Facilities of division available to local governmental bodies.

The director shall make available the facilities and services of his division to counties, county schools, municipalities, urban mass transportation authorities, created pursuant to article twenty-seven, chapter eight of this code, mass transportation divisions of county and municipal governments, volunteer fire departments, and other local governmental bodies within this state. The actual expenses incurred thereby shall be paid by the local governmental body.

§5A-3-9. Examination and testing of purchases; report required.

Within the limit of funds available, the director, or some person appointed by the director, shall determine whether commodities delivered or services performed conform to contractual requirements. Nonconformity shall be reported to the director and chief officer of the spending unit purchasing such commodities or services for remedial action.

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.

A purchase of and contract for commodities, printing and services shall be based, whenever possible, on competitive bids.

The director shall solicit sealed bids for the purchase of commodities and printing which is estimated to exceed ten thousand dollars. No spending unit shall issue a series of requisitions which would circumvent this ten thousand dollar maximum. The director may permit bids by facsimile transmission machine to be accepted in lieu of sealed bids. Provided, That an original bid is received within two working days following the date specified for bid opening. Bids shall be obtained by public notice. The notice may be
published by any advertising medium the director
dees advisable. The director may also solicit sealed
bids by sending requests by mail to prospective suppli­
ers and by posting notice on a bulletin board in his
office: Provided, however, That the director shall,
without competitive bidding, purchase commodities and
printing produced and offered for sale by nonprofit
workshops, as defined in section one, article one of this
chapter, which are located in this state: Provided
further, That such commodities and printing shall be of
a fair market price and of like quality comparable to
other commodities and printing otherwise available as
determined by the director with the advice of the
committee on the purchase of commodities and services
from the handicapped.

Toward the end of effecting the making of contracts
for commodities and printing of nonprofit workshops,
the director shall employ a person whose responsibilities
in addition to other duties shall be to identify all
commodities and printing available for purchase from
such nonprofit workshops, to evaluate the need of the
state for such commodities and printing to coordinate
the various nonprofit workshops in their production
efforts and to make available to such workshops
information about available opportunities within state
government for purchase of commodities or printing
which might be produced and sold by such workshops.
Funds to employ such a person shall be included
annually in the budget.

§5A-3-11. Purchasing in open market on competitive
bids; bids to be based on standard specifications;
period for alteration or withdrawal of
bids; awards to lowest responsible bidder;
uniform bids; record of bids; and exception.

The director may make a purchase of commodities,
printing and services of ten thousand dollars or less in
amount in the open market, but such purchase shall,
wherever possible, be based on at least three competitive
bids.

The director may authorize spending units to pur-
chase commodities, printing and services in the amount of one thousand dollars in the open market without competitive bids.

Bids shall be based on the standard specifications promulgated and adopted in accordance with the provisions of section five of this article, and shall not be altered or withdrawn after the appointed hour for the opening of such bids. All open market orders, purchases based on advertised bid requests or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the government and the delivery terms. Provided, That state bids on school buses shall be accepted from all bidders who shall then be awarded contracts if they meet the state board's "Minimum Standards for Design and Equipment of School Buses". County boards of education may select from those bidders who have been awarded contracts and shall pay the difference between the state aid formula amount and the actual cost of bus replacement. Any or all bids may be rejected. If all bids received on a pending contract are for the same unit price or total amount, the director shall have authority to reject all bids, and to purchase the required commodities, printing and services in the open market, if the price paid in the open market does not exceed the bid prices.

All bidders submitting bid proposals to the purchasing division are required to submit an extra or duplicate copy to the state auditor.

Both copies must be received at the respective offices prior to the specified date and time of the bid openings. The failure to deliver or the nonreceipt of these bid forms at either of these offices prior to the appointed date and hour are grounds for rejection of the bids. In the event of any deviation between the copies submitted to the purchasing division and the state auditor, such bids as to which there is such deviation shall be rejected, if the deviation relates to the quantity, quality or specifications of the commodities, printing or services to
be furnished or to the price therefor or to the date of
delivery or performance. After the award of the order
or contract, the director, or someone appointed by him
for that purpose, shall indicate upon the successful bid
and its copy in the office of the state auditor that it was
the successful bid. Thereafter, the copy of each bid in
the possession of the director and the state auditor shall
be maintained as a public record by both of them, shall
be open to public inspection in the offices of both the
director and the state auditor and shall not be destroyed
by either of them without the written consent of the
legislative auditor: Provided, That the board of regents
may certify in writing to the director the need for a
specific item essential to a particular usage either for
instructional or research purposes at an institution of
higher education and the director upon review of such
certification may provide for the purchase of said
specific items in the open market without competitive
bids. If the director permits bids by facsimile transmis-
sion machine to be accepted in lieu of sealed bids
pursuant to the provisions of section ten of this article,
a duplicate facsimile transmission machine bid shall be
transmitted to the state auditor pursuant to this section:
Provided, however, That an original bid is received by
the state auditor within two working days following the
date specified for bid opening.

§5A-3-12. Prequalification disclosure and payment of
annual fee by vendors required; form and
contents; register of vendors; false affidav-
its, etc.; penalties.

The director shall not accept any bid received from
any vendor unless the vendor has paid the annual fee
specified in section four of this article and has filed with
the director an affidavit of the vendor or the affidavit
of a member of the vendor's firm, or, if the vendor is
a corporation, the affidavit of an officer, director or
managing agent, of such corporation, disclosing the
following information:

(1) If the vendor is an individual, his name and
residence address, and, if he has associates or partners
sharing in his business, their names and residence addresses;

(2) If the vendor is a firm, the name and residence address of each member, partner or associate of the firm;

(3) If the vendor is a corporation created under the laws of this state or authorized to do business in this state, the name and business address of the corporation; the names and residence addresses of the president, vice president, secretary, treasurer and general manager, if any, of the corporation; and the names and residence addresses of each stockholder of the corporation owning or holding at least ten percent of the capital stock thereof;

(4) A statement of whether the vendor is acting as agent for some other individual, firm or corporation, and if so, a statement of the principal authorizing such representation shall be attached to the affidavit or whether the vendor is doing business as another entity;

(5) The vendor's latest Dun & Bradstreet rating, if there is any such rating as to such vendor; and

(6) A list of one or more banking institutions to serve as references for such vendor.

Whenever a change occurs in the information heretofore submitted as required, such change shall be reported immediately in the same manner as required in the original disclosure affidavit.

The affidavit and information so received by the director shall be kept in a register of vendors which shall be a public record and open to public inspection during regular business hours in the director's office and made readily available to the public at such time.

The director may waive the above requirements in the case of any corporation listed on any nationally recognized stock exchange and in the case of any vendor who or which is the sole source for the commodity in question.

Any person who makes such affidavit falsely or who shall knowingly file or cause to be filed with the
director, an affidavit containing a false statement of a material fact or omitting any material fact, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, and, in the discretion of the court, confined in jail not more than one year. In any such case, an individual so convicted shall be adjudged forever incapable of holding any office of honor, trust or profit in this state, or of serving as a juror.

§5A-3-13. Contracts to be approved as to form; filing.
1 Contracts shall be approved as to form by the attorney general. A contract that requires more than six months for its fulfillment shall be filed with the state auditor.

*§5A-3-14. Copies of purchase orders sent to finance division; certificates required before contracts awarded.
1 A copy of all purchase orders shall be transmitted to the director of the finance division so that the proper account may be encumbered before they are sent to the vendors. Except in an emergency, an order or contract shall not be awarded until it has been certified to the director by the secretary as director of the budget that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order or contract.

§5A-3-15. Emergency purchases in open market.
1 The director may authorize, in writing, a state spending unit to purchase in the open market, without filing requisition or estimate, specific commodities for immediate delivery to meet bona fide emergencies arising from unforeseen causes, including delays by contractors, delays in transportation and unanticipated volume of work. A report of any such purchase, together with a record of the competitive bids upon which it was based, shall be submitted at once to the director by the head of the state spending unit concerned, together with a full account of the circumstances of the emergency: Provided, That the director may waive the need for the record of competitive bids. Such report shall be entered on a record and shall be open to public inspection.

*Clerk’s Note: This section was also amended by HB 4386 (Chapter 32), which passed prior to this act.
§5A-3-16. Special fund; purposes; how composed.
There is hereby created a special revenue fund to be administered by the director to facilitate the following functions of the director:

1. Purchase commodities in volume and maintain stocks to supply the needs of state spending units; and
2. Performance of mimeographing, photostating, microfilming, multilithing, multigraphing and other work needed by spending units as provided by section twenty-seven of this article.

The amount of the fund may be fixed and changed by the governor upon the recommendation of the secretary. If at the end of each fiscal year the cash balance plus value of commodity inventories on hand exceeds the amount so fixed, the excess in cash shall be transferred by the governor upon recommendation of the secretary to the general revenue fund and become a part of the general revenue of the state. The fund shall be composed of the following:

1. The cash balance and inventories of the fund heretofore established by this section; and
2. Charges made by the director for commodities sold and services rendered to the state spending units as herein described: Provided, That charges shall not exceed total cost to the fund, which total cost shall include storage, supplies, equipment and salaries and wages of employees necessary to supply commodities and services in addition to purchase price of commodities.

§5A-3-17. Purchases or contracts violating article void; personal liability.
If a spending unit purchases or contracts for commodities contrary to the provisions of this article or the rules and regulations made thereunder, such purchase or contract shall be void and of no effect. The head of such spending unit shall be personally liable for the costs of such purchase or contract, and, if already paid out of state funds, the amount thereof may be recovered in the
§5A-3-18. Substituting for commodity bearing particular trade name or brand.

If a spending unit requests the purchase of a commodity bearing a particular trade name or brand, and if the commodity is covered by standard specifications adopted as provided by section five of this article, the director may substitute a commodity bearing a different trade name or brand, if the substituted commodity reasonably conforms to the adopted standard specifications and can be obtained at an equal or lower price.

§5A-3-19. Purchases from federal government and other sources.

Notwithstanding any other provision of this article, the director may, upon the recommendation of a state spending unit, make purchases from the federal government, from federal government contracts or from the university of West Virginia board of trustees or board of directors of the state college system contracts, if available and financially advantageous.

§5A-3-20. Spending units to submit lists of expendable commodities.

The head of every spending unit shall submit a list of expendable commodities such spending unit has on hand whenever requested to do so by the director.

§5A-3-21. Contracts for public printing and paper for spending units; printing plants at institutions.

The director shall contract for public printing and for printing paper for the use of spending units in the manner provided for contracts under sections ten through nineteen of this article, and in accordance with the specifications adopted as provided by section five of this article: Provided, That the provisions of this article shall not be construed to prohibit the state from maintaining printing plants for the purpose of instruction or for printing for a state spending unit at
§5A-3-22. Legislative printing.

Notwithstanding any other provision of this article, the letting of all contracts for legislative printing shall be subject only to the provisions of this section.

Upon request of the Legislature, or either house thereof, all contracts for legislative printing shall be let on competitive bids by the director to the lowest responsible bidder. Each such contract shall be subject to the approval of the governor, and in case of his disapproval the contract shall be relet on competitive bids submitted in the same manner as the original bids on the contract that was disapproved. Each bid on every such contract shall be within the maximum limits that may be fixed from time to time by concurrent resolution of the Legislature. The clerk of the Senate and the clerk of the House of Delegates shall have exclusive control of all printing authorized by their respective legislative bodies, and shall approve the specifications included in any contract before an invitation for bids is released by the director of purchasing. Before presenting for payment any bill for such legislative printing, the printer shall have the same approved by the purchasing division as correct and according to contract specifications. A copy of all bills for legislative printing shall be furnished the clerk of the house for which such printing was done. When properly approved bills are presented to the clerk of the Senate, or to the clerk of the House of Delegates, he shall draw his requisition upon the auditor in the amount of the bill, payable from the legislative printing fund, and the auditor shall honor the requisition and issue to the printer a state draft therefor.

§5A-3-23. Publication of reports of supreme court of appeals.

Notwithstanding any of the provisions of this article, the official reporter of the supreme court of appeals shall have charge and supervision of the printing and binding of the reports of the decisions of the supreme
court of appeals of the state, and shall contract for their
publication in the same manner that the director of the
purchasing division contracts under sections ten
through nineteen of this article. Such contract shall
provide for the publication of such number of copies as
the reporter and the supreme court of appeals may
jointly direct. If the reporter and the supreme court of
appeals do not agree on the number of copies for which
the publication contract shall provide, the contract shall
provide for the publication of the greater number of
copies directed by either the reporter or the supreme
court of appeals. In no event shall the number of copies
published exceed one thousand five hundred. Copies of
the reports of the decisions of the supreme court of
appeals shall be on such paper and be bound in
accordance with directions and specifications specified
by the reporter by and with the concurrence of the
court. The size of type and page shall be prescribed by
the reporter with the concurrence of the court. A volume
shall be published according to the terms of the contract
whenever ordered by the court. The reporter shall
secure the copyright of each volume for the benefit of
the state. The reports shall be styled “West Virginia
Reports”.

The printing and binding of the reports shall be done
under the direction of and in the manner prescribed by
the reporter, subject to the control of the court. The
reporter shall prefix to the printed report of each case
the dates when the same was submitted and decided.
Each volume shall, if practicable, contain the reports of
at least eighty cases decided by the court, and shall
contain approximately one thousand pages unless
otherwise ordered by the court, exclusive of the index
and table of cases reported and cited. Galley sheets or
proof sheets shall be furnished by the printer to the
reporter in such number as may be required by the
reporter for the purposes of this section. It shall be the
duty of the reporter to proof such galley sheets or proof
sheets against the various cases, including the court's
syllabi, as such cases and the court's syllabi appear in
the most recent bound volume of the appropriate
regional reporter in which such cases are reported.
Neither galley sheets nor proof sheets need be submitted to the court or the clerk thereof for any purpose. Thereafter the reporter shall make such corrections and modifications as he shall deem appropriate and all such corrections and modifications shall be made by the printer as the reporter may direct. If the work is not done in the manner required by law, the reporter shall not approve the volume and shall not accept it.

The reports of the decisions of the supreme court of appeals may be published in pamphlet form in advance of the publication of the bound volumes of the “West Virginia Reports”, periodically, or at such times as may be directed by the reporter and the supreme court of appeals. The reporter shall secure the copyright of each pamphlet of opinions so published in advance. Each pamphlet shall contain the report of such number of cases as the supreme court of appeals and the reporter shall deem advisable.

The contract for the publication of such advance sheets shall be made in the manner provided for the publication of bound volumes of the “West Virginia Reports”.

A charge of not less than the actual cost of printing and distribution shall be made for such advance sheets.

§5A-3-24. Publication of departmental reports; uniform standards; limiting number of publications; requiring division to perform printing and binding.

The director shall have charge and supervision of the printing and binding of all reports transmitted to the governor as required by section twenty, article one, chapter five of this code. Said reports shall be printed annually as soon as possible after the close of the fiscal year.

The director shall specify the uniform maximum standards as to form and format to be used in the preparation and publication of annual reports by the various departments, agencies, boards, commissions and institutions.
The number of copies of such reports shall be limited to the minimum quantity necessary for office use of the reporting spending unit and for legally required distribution and exchange, the exact number of copies of such reports to be expressly subject to the approval of the governor.

The director shall furnish to each spending unit sufficient copies of its report to satisfy the above purposes within the limits set by the governor.

The printing and binding of all such reports shall be done by the department of administration in the printing shop maintained by the department.

Subject to the approval of the secretary of administration and the governor, the director shall have authority to limit the number of any other report, bulletin and other publication ordered to be printed by each spending unit.

Nothing herein shall be construed as preventing the director from utilizing less expensive methods of printing and binding than those prescribed above.

§5A-3-25. Printing, binding and stationery to be paid from current expense appropriations.

Printing, binding and stationery for all spending units shall be paid from the current expense or unclassified appropriations for such spending units.

§5A-3-26. Custodian of reports and acts; delivery to state law librarian for distribution; sale.

The director shall be custodian of the "West Virginia Reports" after they are printed and bound and approved by the reporter, and of the acts of the Legislature after they are printed and bound and approved by the clerk of the House of Delegates. As soon as practicable after any new volume of such reports or acts has been delivered to the director, not including reprints of former volumes, he shall deliver to the state law librarian sufficient copies to enable him to make distribution thereof in the manner prescribed by sections five and six, article eight, chapter fifty-one of this code.
The director shall sell such copies of the reports and acts as remain after the distribution provided by law has been made at a price to be fixed by him with the approval of the secretary, but in no case shall such price be less than the actual cost to the state of the publication thereof.

§5A-3-27. Director to establish central duplicating office; exemption of particular spending units; contracts for duplicating.

Mimeographing, photostating, microfilming, multilithing, multigraphing, and other duplicating work required to be done by or for any spending unit shall be done by a central duplicating office, which office shall be established by and under the supervision of the director.

Mimeographing, photostating, microfilming, multilithing, multigraphing, and other duplicating equipment, supplies, personnel and the funds appropriated therefor shall be transferred to the central duplicating office, upon determination by the director to consolidate.

If the director is of the opinion that any spending unit is capable of doing such duplicating work as may be required by such particular spending unit more efficiently and economically than can the central duplicating office, he may, in his discretion, exempt such particular spending unit from the provisions of this section; or if the director believes economy or efficiency can be effected by letting such work or any part thereof to contract, then he may do so in the manner provided for contracts under sections ten through nineteen of this article.

§5A-3-28. Financial interest of secretary, etc.; receiving reward from interested party; penalty; application of bribery statute.

Neither the secretary, nor the director nor any employee of the division of purchasing, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any commodities or printing, nor in any firm, partnership,
corporation or association furnishing them. Neither the
secretary, nor the director nor any employee of the
division of purchasing shall accept or receive directly or
indirectly from any person, firm or corporation, known
by such secretary, director or employee to be interested
in any bid, contract or purchase, by rebate, gift or
otherwise, any money or other thing of value what-
soever, or any promise, obligation or contract for future
reward, or compensation.

A person who violates this section shall be guilty of
a misdemeanor, and, upon conviction thereof, shall be
confined in jail not less than three months nor more than
one year, or fined not less than fifty nor more than one
thousand dollars, or both, in the discretion of the court:
Provided, That any person who violates any of the
provisions of the last sentence of the first paragraph of
this section under circumstances constituting the crime
of bribery under the provisions of section three, article
five-a, chapter sixty-one of this code, shall, upon
conviction of bribery, be punished as provided in said
article five-a.

§5A-3-29. Penalty for violation of article.

Any person who violates a provision of this article,
except where another penalty is prescribed, shall be
guilty of a misdemeanor, and, upon conviction thereof,
shall be confined in jail not less than ten days nor more
than one year, or fined not less than ten nor more than
five hundred dollars, or both, in the discretion of the
court.

§5A-3-30. Obtaining money and property under false
pretenses or by fraud from state; penalties.

It shall be unlawful for any person to obtain from the
state under any contract made under the provisions of
this article, by false pretense, token or representation,
or by delivery of inferior commodities, with intent to
defraud, any money, goods or other property, and upon
violation thereof, such person shall be guilty of a felony,
and, upon conviction thereof, shall be confined in the
penitentiary not less than one year nor more than five
years, and be fined not exceeding one thousand dollars.
§5A-3-31. Corrupt combinations, collusions or conspiracies prohibited; penalties.

1 It shall be unlawful for any person to corruptly combine, collude or conspire with one or more other persons with respect to the purchasing or supplying of commodities or printing to the state under the provisions of this article if the purpose or effect of such combination, collusion or conspiracy is either to (1) lessen competition among prospective vendors, or (2) cause the state to pay a higher price for such commodities or printing than would be or would have been paid in the absence of such combination, collusion or conspiracy, or (3) cause one prospective vendor or vendors to be preferred over one or more other prospective vendor or vendors. Any person who violates any provision of this section shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, and be fined not exceeding five thousand dollars.

§5A-3-32. Power of director to suspend right to bid; notice of suspension.

1 The director shall have the power and authority to suspend, for a period not to exceed one year, the right and privilege of a vendor to bid on state purchases when the director has reason to believe that such vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director. Every vendor whose right to bid has been so suspended shall be notified thereof by a letter posted by certified mail containing the reason for such suspension.

§5A-3-33. Review of suspension by secretary.

1 Any vendor whose right to bid on state purchases has been suspended by the director under the authority of the preceding section shall have the right to have the director's action reviewed by the secretary, who shall have the power and authority to set aside such suspension.

§5A-3-34. Authority over inventories and property.

1 The director shall, under the direction and supervision
of the secretary, have full authority over inventories and property.

§5A-3-35. Submission of annual inventories.

The head of every spending unit of state government shall, on or before the fifteenth day of July of each year, file with the director an inventory of all real and personal property, and of all equipment, supplies and commodities in its possession as of the close of the last fiscal year, as directed by the director.

§5A-3-36. Inventory of removable property; maintenance and repair of office furniture, machinery and equipment.

The director shall have the power and duty to:

(1) Make and keep current an inventory of all removable property belonging to the state. Such inventory shall be kept on file in the office of the director as a public record. The inventory shall disclose the name and address of the vendor, the date of the purchase, the price paid for the property therein described and the disposition thereof;

(2) Provide for the maintenance and repair of all office furniture, machinery and equipment belonging to the state, either by employing personnel and facilities under his direction or by contracting with state agencies or private parties.

§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; exceptions.

(a) Other provisions of this article notwithstanding, effective the first day of July, one thousand nine hundred ninety, through the thirtieth day of June, one thousand nine hundred ninety-four, in any instance involving the purchase of construction services or for the construction, repair or improvement of any buildings or portions thereof, where the total aggregate cost thereof, whether one or a series of contracts are awarded in completing the project, is estimated by the director to
10 exceed the sum of fifty thousand dollars, and where the
director or any state department is required under the
provisions of this article to make such purchase,
construction, repair or improvement upon competitive
bids, the successful bid shall be determined as provided
in this section. The secretary of the department of tax
and revenue shall promulgate such rules and regula-
tions necessary to (i) determine that vendors have met
the residence requirements described in this section; (ii)
establish the procedure for vendors to certify such
residency requirements at the time of submitting their
bids; (iii) establish a procedure to audit bids which make
a claim for preference permitted by this section and to
reject noncomplying bids; and (iv) otherwise accomplish
the objectives of this section. In prescribing such rules
and regulations, the secretary shall use a strict construc-
tion of the residence requirements set forth in this
section. For purposes of this section, a successful bid
shall be determined and accepted as follows:

(1) From an individual resident vendor who has
resided in West Virginia continuously for the four years
immediately preceding the date on which the bid is
submitted or from a partnership, association or corpo-
ratio resident vendor which has maintained its
headquarters or principal place of business within West
Virginia continuously for four years immediately
preceding the date on which the bid is submitted, if such
resident vendor's bid does not exceed the lowest
qualified bid from a nonresident vendor by more than
two and one-half percent of the latter bid, and if such
resident vendor has made written claim for such
preference at the time the bid was submitted: Provided,
That for purposes of this subparagraph (1), any partner-
ship, association or corporation resident vendor of this
state, which does not meet the requirements of this
subparagraph solely because of the continuous four-year
residence requirement, shall be deemed to meet such
requirement if at least eighty percent of the ownership
interest of such resident vendor is held by another
individual, partnership, association or corporation
resident vendor who otherwise meets the requirements
of this subparagraph, including the continuous four-year
residency requirement: Provided, however, That the secretary of the department of tax and revenue shall promulgate rules and regulations relating to attribution of ownership among several such resident vendors for purposes of determining the eighty percent ownership requirement; or

(2) From a resident or nonresident vendor, if, for purposes of producing or distributing the commodities or completing the project which is the subject of such vendor's bid and continuously over the entire term of such project, on average at least sixty percent of such vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and such vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if such vendor has certified the residency requirements above and made written claim for such preference, at the time the bid was submitted; or

(3) From a vendor who meets the requirements of both subparagraphs (1) and (2) set forth above, if such bid does not exceed the lowest qualified bid from a nonresident vendor by more than five percent of the latter bid, and if such resident vendor has certified the residency requirements above and made written claim for such preference at the time the bid was submitted.

(b) If the secretary of the department of tax and revenue determines under any audit procedure that a vendor who received a preference under this section fails to continue to meet the requirements for such preference at any time during the term of the project for which such preference was received the secretary may: (1) Reject such vendor's bid; or (2) assess a penalty against such vendor of not more than five percent of such vendor's bid on the project.

(c) Political subdivisions of the state including county boards of education may grant the same preferences to any vendor of this state who has made a written claim for such preference at the time a bid is submitted, but for the purposes of this subsection, in determining the
lowest bid, any political subdivision shall exclude from
the bid the amount of business occupation taxes which
must be paid by a resident vendor to any municipality
within the county comprising or located within such
subdivision as a result of being awarded the contract
which is the object of the bid; in the case of a bid
received by a municipality, the municipality shall
exclude only such business and occupation taxes as will
be paid to such municipality: Provided, That prior to
soliciting any such competitive bids, any such political
subdivision may, by majority vote of all its members in
a public meeting where all such votes shall be recorded,
elect not to exclude from the bid the amount of business
and occupation taxes as provided herein.

(d) If any of the requirements or provisions set forth
in this section jeopardize the receipt of federal funds,
then such requirement or provisions shall be void and
of no force and effect for that specific project.

(e) If any provision or clause of this section or
application thereof to any person or circumstance is held
invalid, such invalidity shall not affect other provisions
or applications of this section which can be given effect
without the invalid provision or application, and to this
end the provisions of this section are declared to be
severable.

(f) This section may be cited as the "Jobs for West
Virginians Act of 1990".

§5A-3-37a. Preference for resident vendors; exceptions;
reciprocal preference.

Except where the provisions of section thirty-seven of
this article may apply, in any instance where a purchase
of commodities or printing by the director or by a state
spending unit is required under the provisions of this
article to be made upon competitive bids, preference
shall be given to vendors resident in West Virginia as
against vendors resident in any state that gives or
requires a preference for the purchase of commodities
or printing produced, manufactured or performed in
that state. The amount of the preference shall be equal
to the amount of the preference applied by the other
state.
A vendor shall be deemed to be a resident of this state if such vendor is an individual, partnership, association or corporation in good standing under the laws of the state of West Virginia who (1) is a resident of the state or a foreign corporation authorized to transact business in the state; (2) maintains an office in the state; (3) has paid personal property taxes pursuant to article five, chapter eleven of this code on equipment used in the regular course of supplying services of the general type offered; and (4) has paid business taxes pursuant to chapter eleven of this code. In addition, in the case of a vendor selling tangible personal property, a resident vendor is one who has a stock of materials held in West Virginia for sale in the ordinary course of business, which stock is of the general type offered, and which is reasonably sufficient in quantity to meet the ordinary requirements of customers.

If any of the requirements or provisions set forth in this section jeopardize the receipt of federal funds, then such requirements or provision shall be void and of no force and effect.

§5A-3-38. Leases for space to be made in accordance with article; exception.

Notwithstanding any other provision of this code, no department, agency or institution of state government shall lease, or offer to lease, as lessee, any grounds, buildings, office or other space except in accordance with this article: Provided, That the provisions of this article except as to office space shall not apply in any respect whatever to the division of highways of the department of transportation.

§5A-3-39. Leasing of space by secretary; delegation of authority.

The secretary is authorized to lease, in the name of the state, any grounds, buildings, office or other space required by any department, agency or institution of state government: Provided, That the secretary may expressly delegate, in writing, the authority granted to
him by this article to the appropriate department, agency or institution of state government when the rental and other costs to the state do not exceed the sum specified by regulation in any one fiscal year or when necessary to meet bona fide emergencies arising from unforeseen causes.

§5A-3-40. Selection of grounds, etc.; acquisition by contract or lease; long-term leases; requiring approval of secretary for permanent changes.

The secretary shall have sole authority to select and to acquire by contract or lease, in the name of the state, all grounds, buildings, office space or other space, the rental of which is necessarily required by any spending unit, upon a certificate from the chief executive officer or his designee of said spending unit that the grounds, buildings, office space or other space requested is necessarily required for the proper function of said spending unit, that the spending unit will be responsible for all rent and other necessary payments in connection with the contract or lease and that satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the state. The secretary shall, before executing any rental contract or lease, determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist, and shall contract for or lease said premises at a price not to exceed the fair rental value thereof.

The secretary is hereby authorized to enter into long-term agreements for buildings, land and space for periods longer than one fiscal year: Provided, That such long-term lease agreements shall not be for periods in excess of forty years and shall contain, in substance, all the following provisions: (1) That the department of administration, as lessee, shall have the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor, such notice being given at least thirty days prior to the last day of the succeeding month; (2) that the lease shall be considered canceled without further obligation
on the part of the lessee if the state Legislature or the federal government should fail to appropriate sufficient funds therefor or should otherwise act to impair the lease or cause it to be canceled; and (3) that the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the department of administration before the end of the then current fiscal year.

A spending unit which is granted any grounds, buildings, office space or other space leased in accordance with this section may not order or make permanent changes of any type thereto, unless the secretary has first determined that the change is necessary for the proper, efficient and economically sound operation of the spending unit. For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the spending unit.

§5A-3-41. Leases and other instruments for space signed by secretary or director; approval as to form; filing.

Leases and other instruments for grounds, buildings, office or other space shall be signed by the secretary or director in the name of the state. They shall be approved as to form by the attorney general. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the state auditor.

§5A-3-42. Leasing for space rules and regulations.

The secretary shall have the power and authority to promulgate such rules and regulations as he may deem necessary to carry out the provisions of sections thirty-eight, thirty-nine, forty and forty-one of this article.

§5A-3-43. State agency for surplus property created.

There is hereby established within the purchasing
division and under the supervision of the director of the purchasing division the state agency for surplus property.

§5A-3-44. Authority and duties of state agency for surplus property.

(a) The state agency for surplus property is hereby authorized and empowered (1) to acquire from the United States of America such property, including equipment, materials, books or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for educational, fire protection and prevention, rescue, or public health purposes, including research; (2) to warehouse property acquired; and (3) to distribute the property to tax-supported medical institutions, hospitals, clinics, fire departments, rescue squads, health centers, school systems, schools, colleges and universities within the state, and to other nonprofit medical institutions, hospitals, clinics, volunteer fire departments, volunteer rescue squads, health centers, schools, colleges and universities within the state which have been held exempt from taxation under the Internal Revenue Code of 1986, as amended.

(b) For the purpose of executing its authority under this article, the state agency for surplus property is authorized and empowered to adopt, amend or rescind rules and regulations as may be deemed necessary, and take other action necessary and suitable in the administration of this article, including the enactment and promulgation of rules and regulations necessary to bring this article and its administration into conformity with any federal statutes or rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.

(c) The state agency for surplus property is authorized and empowered to appoint advisory boards or committees necessary to the end that this article and the rules and regulations promulgated hereunder conform with federal statutes and rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.
(d) The state agency for surplus property is authorized and empowered to take action, make expenditures and enter into contracts, agreements and undertakings for and in the name of the state, require reports, and make investigations as may be required by law or regulation of the United States of America in connection with the receipt, warehousing and distribution of property received by the state agency for surplus property from the United States of America.

(e) The state agency for surplus property is authorized and empowered to act as a clearinghouse of information for the public and private nonprofit institutions and agencies referred to in subsection (a) of this section, to locate property available for acquisition from the United States of America, to ascertain the terms and conditions under which the property may be obtained, to receive requests from the above-mentioned institutions and agencies and to transmit to them all available information in reference to the property, and to aid and assist the institutions and agencies in every way possible in the consummation or acquisition of transactions hereunder.

(f) The state agency for surplus property shall cooperate to the fullest extent consistent with the provisions of this article, with the departments or agencies of the United States of America and shall make reports in the form and containing the information the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for property donable or donated to the state.

§5A-3-45. Disposition of surplus state property; semianual report; application of proceeds from sale.

The agency shall have the exclusive power and authority to make disposition of commodities or expen-
dable commodities now owned or in the future acquired by the state when any such commodities are or become obsolete or unusable or are not being used or should be replaced.

The agency shall determine what commodities or expendable commodities should be disposed of and shall make such disposition in the manner which will be most advantageous to the state, either by transferring the particular commodities or expendable commodities between departments, by selling such commodities to county commissions, county boards of education, municipalities, public service districts, county building commissions, airport authorities, parks and recreation commissions, nonprofit domestic corporations qualified as tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and volunteer fire departments in this state, when such volunteer fire departments have been held exempt from taxation under section 501(c) of the United States Internal Revenue Code, by trading in such commodities as a part payment on the purchase of new commodities, or by sale thereof to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms and place of such sale as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein the sale is to be conducted. The sale may also be advertised in such other advertising media as the agency may deem advisable. The agency may sell to the highest bidder or to any one or more of the highest bidders, if there is more than one, or, if the best interest of the state will be served, reject all bids.

Upon the transfer of commodities or expendable commodities between departments, or upon the sale thereof to an eligible organization described above, the agency shall set the price to be paid by the receiving eligible organization, with due consideration given to current market prices.

The agency may sell expendable, obsolete or unused motor vehicles owned by the state to an eligible
organization, other than volunteer fire departments. In addition, the agency may sell expendable, obsolete or unused motor vehicles owned by the state with a gross weight in excess of four thousand pounds to an eligible volunteer fire department. The agency, with due consideration given to current market prices, shall set the price to be paid by the receiving eligible organization, for motor vehicles sold pursuant to this provision:

Provided, That the sale price of any motor vehicle sold to an eligible organization shall not be less than the "average loan" value, as published in the most recent available eastern edition of the National Automobile Dealer's Association (N.A.D.A.) Official Used Car Guide, if such a value is available, unless the fair market value of the vehicle is less than the N.A.D.A. "average loan" value, in which case the vehicle may be sold for less than the "average loan" value. Such fair market value must be based on a thorough inspection of the vehicle by an employee of the agency who shall consider the mileage of the vehicle, and the condition of the body, engine and tires as indicators of its fair market value. If no such value is available, the agency shall set the price to be paid by the receiving eligible organization with due consideration given to current market prices.

The duly authorized representative of such eligible organization, for whom such motor vehicle or other similar surplus equipment is purchased or otherwise obtained, shall cause ownership and proper title thereto to be vested only in the official name of the authorized governing body for whom the purchase or transfer was made. Such ownership or title, or both, shall remain in the possession of that governing body and be non-transferable for a period of not less than one year from the date of such purchase or transfer. Resale or transfer of ownership of such motor vehicle or equipment prior to an elapsed period of one year may be made only by reason of certified unserviceability.

The agency shall report to the legislative auditor, semiannually, all sales of commodities or expendable commodities made during the preceding six months to eligible organizations. The report shall include a description of the commodities sold, the price paid by
the eligible organization, which received the commodities; and the report shall show to whom each commodity was sold.

The proceeds of such sales or transfers shall be deposited in the state treasury to the credit on a pro rata basis of the fund or funds out of which the purchase of the particular commodities or expendable commodities was made: Provided, That the agency may charge and assess fees reasonably related to the costs of care and handling with respect to the transfer, warehousing, sale and distribution of state property disposed of or sold pursuant to the provisions of this section.

§5A-3-46. Warehousing, transfer, etc., charges.

Any charges made or fees assessed by the state agency for surplus property for the acquisition, warehousing, distribution or transfer of any property acquired by donation from the United States of America for educational purposes or public health purposes, including research, shall be limited to those reasonably related to the costs of care and handling in respect to its acquisition, receipts, warehousing, distribution or transfer by the state agency for surplus property. All charges designated herein shall be used by the state agency for surplus property to defray the general operating expenses of the state agency for surplus property.

§5A-3-47. Department of agriculture and other agencies exempted.

Notwithstanding any provisions or limitations of this article, the state department of agriculture and any other state departments or agencies hereafter so designated are authorized and empowered to distribute food, food stamps, surplus commodities and agricultural products under contracts and agreements with the federal government or any of its departments or agencies, and the state department of agriculture and any other state departments or agencies hereafter so designated are authorized and empowered to adopt rules and regulations in order to conform with federal requirements and standards for such distribution and
also for the proper distribution of such food, food 
stamps, commodities and agricultural products. To the 
extent set forth in this section, the provisions of this 
article shall not apply to the state department of 
agriculture and any other state departments or agencies 
hereafter so designated for the purposes set forth in this 
section.

§5A-3-48. Travel rules and regulations; exceptions.

The secretary of administration shall promulgate 
rules and regulations relating to the ownership, pur- 
chase, use, storage, maintenance, and repair of all motor 
vehicles and aircraft owned by the state of West 
Virginia and in the possession of any department, 
institution, or agency thereof: Provided, That the 
provisions of sections forty-eight through fifty-three of 
this article shall not apply to the division of highways 
of the department of transportation or to the division of 
public safety of the department of public safety. If, in 
the judgment of the secretary, economy or convenience 
indicate the expediency thereof, the secretary may 
require all vehicles and the aircraft subject to regulation 
by this article, or such of them as he may designate, to 
be kept in such garages, and other places of storage, and 
to be made available in such manner and under such 
terms for the official use of such departments, institu- 
tions, agencies, officers, agents and employees of the 
state as the secretary may designate by any such rule 
or regulation as he may from time to time promulgate. 
The secretary shall also have the authority to administer 
the travel regulations promulgated by the governor in 
accordance with section eleven, article three, chapter 
twelve of this code, unless otherwise determined by the 
governor.

§5A-3-49. Central motor pool for state-owned vehicles 
and aircraft.

The secretary may create a central motor pool, which 
pool shall be maintained by the purchasing division of 
the department of administration, subject to such rules 
and regulations as the secretary may from time to time 
promulgate. Said division shall be responsible for the
§5A-3-50. Acquiring and disposing of vehicles and aircraft.

The secretary shall be empowered to purchase new vehicles and aircraft and dispose of old vehicles and aircraft as is practical from time to time.

§5A-3-51. Maintenance and service to vehicles and aircraft.

The secretary may utilize any building or land owned by the state, any department, institution or agency thereof, for the storing, garaging, and repairing of such motor vehicles and aircraft. The secretary shall provide for the employment of personnel needed to manage said motor pool and to repair and service such vehicles and aircraft and for the purchase of gasoline, oil, and other supplies for use in connection therewith, and may utilize the facilities, services and employees of any department, institution or agency of the state to effectuate the purposes thereof.

§5A-3-52. Special fund for travel management created.

There is hereby created a special fund in the state treasury, out of which all costs and expenses incurred pursuant to this section shall be paid. All allocations of costs and charges for operating, repairing and servicing motor vehicles and aircraft made against any institution, agency or department shall be paid into such special fund by said department or agency. All funds so paid or transferred into this special fund are hereby appropriated for the purposes of this section and shall be paid out as the secretary may designate; said funds to be transferred to include all appropriations for the acquisition, maintenance, repair and operation of motor vehicles and aircraft and for personnel.

§5A-3-53. Enforcement of travel management regulations.

If any state officer, agent or employee fails to comply with any rule or regulation of the secretary made
pursuant to section forty-eight of this article, the state
auditor shall, upon order of the secretary, refuse to issue
any warrant or warrants on account of expenses
incurred, or to be incurred, in the purchase, operation,
maintenance, or repairs of any motor vehicle or aircraft
now or to be in the possession or under the control of
such officer, agent or employee. The secretary may take
possession of any state-owned vehicle or aircraft and
transfer it to the central motor pool or to make such
other disposition thereof as the secretary may direct.

§5A-3-54. Payment of legitimate uncontested invoices;
interest on late payments.

(a) Any properly registered and qualified vendor who
supplies services or commodities to any state agency
shall be entitled to prompt payment upon presentation
to that agency of a legitimate uncontested invoice.

(b) (1) Except as provided in subdivision (2) of this
subsection, for purchases of services or commodities
made on or after the first day of July, one thousand nine
hundred ninety-one, a state check shall be issued in
payment thereof within sixty days after a legitimate
uncontested invoice is received by the state agency
receiving the services or commodities. Any state check
issued after such sixty days shall include interest at the
current rate, as determined by the state tax commis-
sioner under the provisions of section seventeen-a,
article ten, chapter eleven of this code, which interest
shall be calculated from the sixty-first day after such
invoice was received by the state agency until the date
on which the state check is mailed to the vendor.

(2) For purchases of services or commodities made on
or after the first day of July, one thousand nine hundred
ninety-two, by the division of highways, the public
employees insurance agency, and by the department of
health and human resources, a state check shall be
issued in payment thereof within sixty days after a
legitimate uncontested invoice is received by any of such
agencies receiving the services or commodities. Any
state check issued after sixty days shall include interest
at the current rate, determined in the manner provided
in subdivision (1) of this subsection, which interest shall be calculated from the sixtieth day after such invoice was received by any of such agencies until the date on which the state check is mailed to the vendor.

(3) For purposes of this subsection, an invoice shall be deemed to be received by a state agency on the date on which the invoice is marked as received by the agency, or three days after the date of the postmark made by the United States postal service as evidenced on the envelope in which the invoice is mailed, whichever is earlier: Provided, That in the event an invoice is received by a state agency prior to the date on which the commodities or services covered by the invoice are delivered and accepted or fully performed and accepted, the invoice shall be deemed to be received on the date on which the commodities or services covered by the invoice were actually delivered and accepted or fully performed and accepted.

(c) The state auditor shall deduct the amount of any interest due for late payment of an invoice from any appropriate account of the state agency responsible for the late payment: Provided, That if two or more state agencies are responsible for the late payment, the state auditor shall deduct the amount of interest due on a pro rata basis.

(d) The state agency initially receiving a legitimate uncontested invoice shall process such invoice for payment within ten days from its receipt: Provided, That in the case of the department of health and human resources, the division of highways and the public employees insurance agency, such invoices shall be processed within fifteen days of their receipt. No state agency shall be liable for payment of interest owed by another state agency under this section.

(e) Any other state agency charged by law with processing a state agency's requisition for payment of a legitimate uncontested invoice shall either process the claim or reject it for good cause within ten days after such state agency receives it. Failure to comply with the requirements of this subsection shall render such state
agency liable for payment of the interest mandated by
this section when there is a failure to promptly pay a
legitimate uncontested invoice: *Provided*, That no such
state agency shall be liable for payment of interest owed
by another state agency under this section.

(f) For purposes of this section, the phrase “state
agency” means any agency, department, board, office,
bureau, commission, authority or any other entity of
state government.

(g) This section may be cited as the “Prompt Pay Act
of 1990”.

ARTICLE 3A. CENTRAL NONPROFIT COORDINATING AGENCY
AND COMMITTEE FOR THE PURCHASE OF
COMMODITIES AND SERVICES FROM THE
HANDICAPPED.

§5A-3A-1. Purpose.
§5A-3A-2. Central nonprofit agency.
§5A-3A-3. Committee for the purchase of commodities and services from the
handicapped.
§5A-3A-4. Responsibilities of the committee for the purchase of commodities
and services from the handicapped.

§5A-3A-1. Purpose.

1 The purpose of this article is to further the state's
2 policy of encouraging disabled persons to achieve
3 maximum personal independence by engaging in
4 productive activities and in addition to provide state
5 agencies, institutions and political subdivisions with a
6 method for achieving conformity with purchasing
7 procedures and requirements of nondiscrimination,
8 affirmative action, in employment matters related to
9 disabled persons.

§5A-3A-2. Central nonprofit agency.

1 A central nonprofit agency approved by the director
2 of the division of rehabilitation services is established
3 for the purpose of coordinating purchases under the
4 provisions of section ten, article three of this chapter,
5 between various “spending units” of the state and
6 “nonprofit workshops”. This agency shall have the
7 following responsibilities:
(a) Represent qualified nonprofit workshops in dealing with state purchasing agents and the other bodies charged with purchasing responsibilities;

(b) Evaluating the qualifications and capabilities of workshops and entering, as necessary, into contracts with government procuring entities for the furnishing of the commodities or services provided by the workshops;

(c) Overseeing workshops to ensure compliance with contract performance and quality standards; list the commodities and services of participating workshops, research and assist the workshops in developing new products and upgrading existing ones, and shall survey applicable private industry to provide input on fair market prices; and

(d) Present an annual report for each fiscal year concerning the operations of its nonprofit workshops to the director of the division of rehabilitation services.

§5A-3A-3. Committee for the purchase of commodities and services from the handicapped.

(a) The committee for the purchase of commodities and services from the handicapped is hereby created as a part of the department of administration and shall be composed of the following six members who are to be appointed by the governor with the advice and consent of the Senate: A private citizen who is conversant with the problems incidental to the employment of handicapped persons; a representative of a producing nonprofit workshop; a representative of the division of rehabilitation services; a representative of the department of administration who is knowledgeable in the purchasing requirements of the state; a representative of private business who is knowledgeable in the activities involved in the sale of commodities or services to governmental entities; and a representative of organized labor who is knowledgeable in matters relating to employment of the disabled. The governor shall appoint one member to serve as chairperson.
(b) Members of the committee are appointed to serve two-year terms expiring on the thirty-first day of January of odd-numbered years. Members who are not state employees shall receive compensation for their service of fifty dollars per day for each day actually engaged in the work of the committee and all members shall receive reimbursement by the state for expenses incurred in performing their duties as members.

(c) The committee shall have as an executive secretary the person charged with program management in section ten, article three of this chapter. The executive secretary shall be responsible for the day-to-day management of the committee and shall coordinate with the central nonprofit agency to perform the duties outlined in section ten, article three of this chapter.

§5A-3A-4. Responsibilities of the committee for the purchase of commodities and services from the handicapped.

The committee shall have the following duties and responsibilities:

(a) Determining the fair market price of all commodities, printing and services produced by nonprofit workshops and offered for sale by the central nonprofit agency to the various departments and political subdivisions of the state. Prices shall be revised periodically to reflect changing market conditions.

(b) Monitoring the activities of the central nonprofit agency to assure that the interests of the state’s handicapped citizens are advanced by the agency. The committee shall make rules necessary to monitor the agency as well as matters related to the state’s use of the products and services produced by the handicapped. Except as stated in section ten, article three of this chapter, rules shall reflect agreement with the policies and procedures established by the state’s purchasing units.

(c) Monitoring the performance of the central nonprofit agency to see that the commodities and services produced meet state specifications (or in the absence of
specifications meet standards in use by the federal
government or industry) as to quality and delivery. The
committee shall provide procedures for formal and
informal resolution of provider and consumer grievan-
ces or complaints.

(d) Maintaining records pertaining to its activities
under the act including records of sales, formal
grievances, number of handicapped workers employed,
a summary of disabilities for workers providing
services, a list of workshop products and services, and
the geographic distribution of provider workshops. On
or before the first day of January of each year the
committee shall file with the governor and the presiding
officer of each house of the Legislature a written report
summarizing the above records and giving a detailed
accounting for all funds received and disbursed by the
committee during the preceding year.

1 The committee may adopt rules for the implementa-
tion, extension, administration, or improvement of the
program authorized by this article.

1 Exceptions from the operation of the mandatory
provisions of section ten, article three of this chapter
may be made in any case where the commodity or
printing so produced or provided does not meet the
reasonable requirements of the purchasing unit, cannot
be reasonably provided by a nonprofit workshop in the
opinion of the committee or the central nonprofit
agency, or is not of a fair market price and of like
quality to other commodities or printing otherwise
available as determined by the director of purchasing
with the advice of the committee for the purchase of
commodities and services from the handicapped. No
spending unit may evade the intent of this section when
required goods or services are reasonably available from
nonprofit workshops.

ARTICLE 4. GENERAL SERVICES DIVISION.

§5A-4-1. General services division; director.
§5A-4-1. General services division; director.

There is hereby created a new general services division of the department of administration for the purpose of having the care, custody and control of the capitol buildings. The division shall be under the supervision of a director.

§5A-4-2. Care, control and custody of capitol buildings and grounds.

The director shall be charged with the full responsibility for the care, control and custody of the capitol buildings and in this connection he shall:

(1) Furnish janitorial services, such services to be provided by employees of the department of administration for the main capitol building, including east and west wings, together with all the departments therein, or connected therewith, regardless of the budget or budgets, departmental or otherwise, from which such janitorial services are paid, and shall furnish janitorial supplies, light, heat and ventilation for all the rooms and corridors of the buildings: Provided, That nothing herein shall be construed to prohibit contracts for janitorial services with sheltered workshops. The president of the Senate and speaker of the House of Delegates, or their respective designees, shall have charge of the halls and committee rooms of their respective houses and any other quarters at the state capitol provided for the use of the Legislature or its staff, and keep the same properly cleaned, warmed and in good order, and shall do and perform such other duties in relation thereto as either house may require;

(2) Landscape and take care of the lawns and gardens;

(3) Direct the making of all minor repairs to and alterations of the capitol buildings and governor's
mansion and the grounds of such buildings and mansion. Major repairs and alterations shall be made under the supervision of the director, subject to the direction of the secretary.

The offices of the assistants and employees appointed to perform these duties shall be located where designated by the secretary, except that they shall not be located in any of the legislative chambers, offices, rooms or halls. Office hours shall be so arranged that emergency or telephone service shall be available at all times. The hours shall be so arranged that janitorial service shall not interfere with other employment during regular office hours.

§5A-4-3. Security officers; appointment; oath; carrying weapons; powers and duties generally, etc.

In addition to the other powers given and assigned to the secretary in this chapter, he is hereby authorized to appoint bona fide residents of this state to act as security officers upon any premises owned or leased by the state of West Virginia and under the jurisdiction of the secretary, subject to the conditions and restrictions hereinafter imposed. Before entering upon the performance of his duties as such security officer, each person so appointed shall qualify therefor in the same manner as is required of county officers by taking and filing an oath of office as required by article one, chapter six of this code. No such person shall have authority to carry a gun or any other dangerous weapon until he shall have obtained a license therefor in the manner prescribed by section two, article seven, chapter sixty-one of this code.

It shall be the duty of any person so appointed and qualified to preserve law and order on any premises under the jurisdiction of the secretary to which he may be assigned by the secretary. For this purpose he shall as to offenses committed on such premises have and may exercise all the powers and authority and shall be subject to all the responsibilities of a deputy sheriff of the county. The assignment of security officers to any premises under the jurisdiction of the secretary shall not be deemed to supersede in any way the authority or duty
of other peace officers to preserve law and order on such premises.

The secretary may at his pleasure revoke the authority of any such officer by filing a notice to that effect in the office of the clerk of each county in which his oath of office was filed, and in the case of officers licensed to carry a gun or other dangerous weapon, by notifying the clerk of the circuit court of the county in which the license therefor was granted.

§5A-4-4. Unlawful to kill or molest animals, birds or fowls upon grounds of capitol; powers and duties of security officers; penalties.

In addition to the duties of persons appointed and qualified as security officers pursuant to section three, article four, chapter five-a of this code, to preserve law and order on any premises under the jurisdiction of the secretary to which he may be assigned by the secretary, such security officers shall have authority and it shall be the duty of such security officers to enforce the provisions of this section. This authority and duty of security officers shall not be deemed to supersede in any way the authority or duty of other peace officers to enforce the provisions of this section.

It shall be unlawful at any time to kill or molest in any manner, any animals, birds or fowls on the grounds of the capitol buildings or governor’s mansion, except as may be deemed necessary by the secretary for the control or extermination of animals, birds or fowls deemed by him to be pests or a danger to the health and safety. Any person who kills or molests in any manner, or knowingly allows a dog or other animal owned by him to kill or molest in any manner any animals, birds or fowls on the grounds of the capitol buildings or governor’s mansion shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than fifty dollars nor more than five hundred dollars or, in the discretion of the court, be imprisoned in the county jail for not more than six months, or both such fine and imprisonment.

It shall be unlawful for any person to knowingly allow
a dog owned by him to be upon the grounds of the
capitol buildings or governor’s mansion unless such dog
is under control by leash. Any person who knowingly
allows a dog owned by him to be upon the grounds of
the capitol buildings or governor’s mansion while not
under control by leash shall be guilty of a misdemeanor,
and, upon conviction thereof, be fined not less than
twenty-five nor more than one hundred dollars.

It shall further be unlawful for any person to
knowingly allow a dog or other animal owned by him
or under his control to defecate upon the grounds of the
capitol buildings or governor’s mansion. In the event
that a dog or other animal owned by or under the control
of a person defecates upon the grounds of the capitol
buildings or governor’s mansion, the person shall
remove such defecation. Any person who knowingly
allows a dog or other animal owned by him or under
his control to defecate upon the grounds of the capitol
buildings or governor’s mansion and who subsequently
fails to remove said defecation, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than twenty-five nor more than one
hundred dollars.

§5A-4-5. Regulation of parking on state-owned property
in Charleston; penalties; jurisdiction.

The secretary is vested with authority to regulate
parking of motor vehicles in accordance with the
provisions of this section with regard to the following
state-owned property in the city of Charleston, Kanawha
county:

(a) The east side of Greenbrier Street between
Kanawha Boulevard and Washington Street, East;

(b) The west side of California Avenue between
Kanawha Boulevard and Washington Street, East;

(c) Upon the state-owned grounds upon which state
Office Building No. 3 is located;

(d) Upon the state-owned grounds upon which state
Office Building No. 4, 112 California Avenue, is located;
(e) In the state-owned parking garage at 212 California Avenue and upon the state-owned grounds upon which such parking garage is located;

(f) Upon the state-owned property at Michigan Avenue and Virginia Terrace; and

(g) Upon any other property now or hereafter owned by the state and used for parking purposes in conjunction with the state capitol or state office buildings numbers three and four, including the Laidley field complex.

The secretary is authorized to promulgate rules and regulations respecting parking and to allocate parking spaces to public officers and employees of the state upon all of the aforementioned property of the state: Provided, That during sessions of the Legislature, including regular, extended, extraordinary, and interim sessions, parking on the east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East, in the science and culture center parking lot, on the north side of Kanawha Boulevard between Greenbrier Street and California Avenue, and on the west side of California Avenue between Kanawha Boulevard and Washington Street, East, shall be subject to rules and regulations promulgated jointly by the speaker of the House of Delegates and the president of the Senate. Any person parking any vehicle contrary to the rules and regulations promulgated under authority of this section shall be subject to a fine of not less than one dollar nor more than twenty-five dollars for each offense. In addition, the secretary or the Legislature, as the case may be, may cause the removal at owner expense of any vehicle that is parked in violation of such rules and regulations. Magistrates in Kanawha county shall have jurisdiction of all such offenses.

The secretary is authorized to employ such persons as may be necessary to enforce the parking rules and regulations promulgated under the provisions of this section.

On or before the first day of December, one thousand nine hundred ninety, the secretary shall perform a study
of the parking requirements at the capitol complex, which study shall include the need, estimated cost and availability of a suitable location, for a parking building at the capitol complex.

ARTICLE 5. GOVERNOR'S MANSION ADVISORY COMMITTEE.

§5A-5-1. Committee continued; appointment, terms, etc., of members; meetings and responsibilities; annual report.

§5A-5-2. Office of governor's mansion director created; duties and responsibilities.


§5A-5-1. Committee continued; appointment, terms, etc., of members; meetings and responsibilities; annual report.

There is hereby continued the governor's mansion advisory committee within the department of administration. The secretary of administration or his designated representative, the commissioner of culture and history or his designated representative, and the spouse of any governor during the term of office of that governor, or the designated representative of such governor, shall be ex officio members of the committee. In addition, the governor shall appoint three additional members of the committee, one to be a curator in the field of fine arts, one to be an interior decorator who is a member of the American institute of decorators, and one to be a building contractor. The appointive members of the committee shall serve for a term of four years. The members of the committee shall serve without compensation but shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their duties; except that in the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state. The governor shall designate from the committee a chairman to serve for a term of one year. The secretary of administration shall serve as secretary. The committee shall meet upon the call of the chairman annually and may meet at such other times as may be necessary for the performance of its functions.
The committee shall be charged with the following responsibilities:

(1) To make recommendations to the governor for the maintaining, preserving and replenishing of all articles of furniture, fixtures, decorative objects, linens, silver, china, crystal and objects of art used or displayed in the state rooms of the governor's mansion, which state rooms shall consist of the front hall, the reception room, the ballroom and its sitting room, the state dining room, the front upstairs hall and the music room;

(2) To make recommendations to the governor as to the decor and arrangements best suited to enhance the historic and artistic values of the mansion in keeping with the architecture thereof and of such articles of furniture, fixtures, decorative objects, linens, silver, china, crystal and objects of art, which recommendations shall be considered by the governor in decorating said mansion; and

(3) To invite interested persons to attend its meetings or otherwise to assist in carrying out its functions.

All departments, boards, agencies, commissions, officials and employees of the state are hereby authorized to cooperate with and assist the committee in the performance of its functions and duties whenever possible. As soon after the close of each fiscal year as possible, the committee shall make an annual report to the governor and the Legislature with respect to its activities and responsibilities.

§5A-5-2. Office of governor's mansion director created; duties and responsibilities.

There is hereby created the office of governor's mansion director, who shall be qualified by background and experience for such a position and shall be appointed by the governor to serve at the will and pleasure of the governor. The mansion director shall be charged with the following duties and responsibilities: To protect and preserve all articles of furniture, fixtures, table linens, silver, china, crystal and objects of art displayed in the state rooms in the mansion. The mansion director
shall assist the governor and/or the governor’s spouse in
the scheduling of state government functions and
entertainment at the mansion.

§5A-5-3. Official use of state rooms in governor’s man-
sion; vacating private rooms of mansion.

(a) The state rooms of the mansion shall be used for
official state government functions and entertainment:
Provided, That tours of the state rooms of the mansion
shall be permitted, and the mansion director shall assist
in the scheduling of said tours and prescribe rules and
regulations governing same.

(b) No personal furniture or furnishings of the first
family may be placed in the state rooms of the mansion
except for home entertainment equipment.

(c) No furniture or furnishings in the state rooms
located on the first floor of the mansion may be replaced,
removed or sold without prior approval of the governor’s
mansion advisory committee.

(d) No items in the state rooms purchased by the West
Virginia mansion preservation foundation, inc., may be
replaced, removed or sold without prior approval of such
corporation.

(e) The outgoing governor and his family shall vacate
the private rooms of the mansion at least seven days
prior to the inauguration of a new governor so that the
mansion may be made suitable for the change in
occupancy.

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS
DIVISION.

§5A-7-1. Definitions.
§5A-7-2. Division created; purpose; use of facilities, rules and regulations.
§5A-7-3. Director; appointment and qualifications.
§5A-7-4. Powers and duties of division generally; review of findings by
governor; authority of governor to order transfer of equipment
and personnel; professional staff.
§5A-7-5. Control over central mailing office.
§5A-7-6. Central mailing office employees.
§5A-7-7. Central mailing office responsibilities.
§5A-7-8. Use of the central mailing office.
§5A-7-9. Preparation of mail for special rates.
§5A-7-10. Special fund created; payments into fund; charges for services; disbursements from fund.

§5A-7-11. Confidential records.

§5A-7-1. Definitions.

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

(a) "Data-processing equipment" means: (1) Any equipment having stored program capabilities; (2) any equipment designed to handle electronic input-output devices; or (3) any other similar equipment specified by the director;

(b) "Director" means the director of the information services and communications division;

(c) "Division" means the information services and communications division established in section two hereof;

(d) "Secretary" means the secretary of the department of administration;

(e) "Telecommunications equipment" means: (1) Any equipment used in the transmission, emission or reception of signals, writings, images, sounds or other forms of communication by electromagnetic or visual means; or (2) any other similar equipment specified by the director.

§5A-7-2. Division created; purpose; use of facilities; rules and regulations.

There is hereby created the information services and communications division of the department of administration for the purpose of establishing, developing and improving data processing and telecommunication functions in the various state agencies, for promulgating standards in the utilization of data processing and telecommunication equipment and for promoting the more effective and efficient operation of all branches of state government. The facilities of the division shall be available, subject to rules and regulations established by the secretary, to the legislative, executive and judicial branches of state government. Such rules and regulations shall be promulgated in accordance with the
provisions of article three, chapter twenty-nine-a of this code.

§5A-7-3. Director; appointment and qualifications.

The division shall be under the supervision and control of a director. The secretary shall appoint a director of the division. The director must have extensive knowledge in the principles and practices of administration, five years' experience in data processing and telecommunications operations and extensive knowledge of the procedures and techniques used in conducting highly complex systems analyses.

§5A-7-4. Powers and duties of division generally; review of findings by governor; authority of governor to order transfer of equipment and personnel; professional staff.

The division shall be responsible for the planning of an informational and analytical system for use by all branches of state government. The division shall also evaluate the economic justification, system design and suitability of equipment and systems used in state government. The director shall report to the secretary.

The governor shall review such findings and recommendations and is hereby authorized to order the transfer, in whole or in part, to the division from any other department or agency of state government, except the Legislature, the judiciary and the university of West Virginia board of trustees and board of directors for the state college system, of all data processing and telecommunications activities, and the equipment, supplies, personnel and funds appropriated therefor utilized for data processing and telecommunication purposes: Provided, That any such transfer shall not be effective until ninety days following the entry of the transfer order by the governor.

The director shall be responsible for the development of personnel to carry out the technical work of the division and is hereby authorized to approve reimbursement of costs incurred by employees to obtain education and training.
Any procurements or changes in data processing and/or telecommunication equipment or services by any spending unit shall be referred to the director and payment for any such procurement or change will not be honored unless approved by the director.

An accounting system shall be implemented and maintained by the director for all telephone service to the state.

§5A-7-5. Control over central mailing office.

The central mailing office heretofore controlled by the director of the general services division shall hereinafter be under the control of the director of the information services and communications division.

§5A-7-6. Central mailing office employees.

The director shall employ such persons as shall be necessary to carry out the provisions of sections seven, eight, nine and ten of this article.

§5A-7-7. Central mailing office responsibilities.

The director shall have the general charge and supervision of the central mailing office, and shall be responsible for its efficient administration. The director shall be required to: (1) Charge each spending unit of state government served by the central mailing office for providing such services; (2) keep proper account of the receipts and disbursements of the central mailing office; (3) render to the secretary a report each month showing the receipts and expenses of the central mailing office for the preceding month, and shall render such other reports as the secretary may require; (4) keep the central mailing office open during regularly stated hours to serve state spending units; and (5) provide rules and regulations for the efficient and prompt dispatch of the mail.

§5A-7-8. Use of the central mailing office.

All state spending units having their offices in the capitol, except the legislative branch of government, shall dispatch all mail through the central mailing office: Provided, That mail prepared after gathering
time and mail for special handling may be posted without utilizing the central mailing office upon approval of the director.

§5A-7-9. Preparation of mail for special rates.
All mail received by the central mailing office shall be processed and presorted in order to receive the most favorable mailing rates, unless otherwise directed by the director. The director is authorized to make such expenditures as are necessary to process and presort all outgoing mail or to enter into contracts with any person, firm or corporation engaged in such business to supply the service.

§5A-7-10. Special fund created; payments into fund; charges for services; disbursements from fund.
For the operation of the division, there is hereby created in the state treasury a special revolving fund to be known and designated as the "information services and communications fund". This fund shall consist of appropriations made by the Legislature, funds transferred in accordance with the provisions of section four of this article, funds received for data processing, telecommunication and central mailing office services rendered to other agencies, departments, units of state and local government and any other entity, and funds received from the federal government or any agency or department thereof, which federal funds the division is hereby authorized to receive. Each agency, department, unit of state or local government or any other entity served by the information services and communications division, is hereby authorized and directed to transmit to the division for deposit in said special fund the charges made by the agency for data processing, telecommunication and central mailing office services rendered, such charges to be those fixed in a schedule or schedules prepared by the director and approved by the governor. Disbursements from the fund shall be made in accordance with an approved expenditure schedule as provided by article two, chapter five-a of this code and shall be made under the direct supervision of the secretary.
§5A-7-11. Confidential records.

1 Under no circumstances whatever shall the head of
2 any state department or agency deliver to the division
3 any records required by law to be kept confidential, but
4 such head may extract information from such records
5 for data processing by such division, provided the
6 integrity of such confidential records is fully protected.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-1. Short title.
§5A-8-2. Declaration of policy.
§5A-8-3. Definitions.
§5A-8-4. Categories of records to be preserved.
§5A-8-5. State records administrator.
§5A-8-6. Records management and preservation advisory committee.
§5A-8-7. Duties of administrator.
§5A-8-8. Rules and regulations.
§5A-8-10. Essential state records—Preservation duplicates.
§5A-8-11. Essential state records—Safekeeping.
§5A-8-12. Essential state records—Maintenance, inspection and use.
§5A-8-15. Records management and preservation of local records.
§5A-8-16. Assistance to legislative and judicial branches.
§5A-8-17. Disposal of records.
§5A-8-18. Destruction of nonrecord materials.
§5A-8-19. Annual report.

§5A-8-1. Short title.

1 This article shall be known as the "Records Management and Preservation of Essential Records Act".

§5A-8-2. Declaration of policy.

1 The Legislature declares that programs for the
2 efficient and economical management of state and local
3 records will promote economy and efficiency in the day-
4 to-day record-keeping activities of state and local
5 government and will facilitate and expedite government
6 operations; that records containing information essential
7 to the operation of government and to the protection of
8 the rights and interests of persons must be protected
9 against the destructive effects of all forms of disaster
10 and must be available when needed. It is necessary,
therefore, to adopt special provisions for the selection and preservation of essential state and local records thereby providing for the protection and availability of such information.

§5A-8-3. Definitions.

As used in this article:

(a) "Disaster" means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage or other condition of extreme peril resulting in substantial damage or injury to persons or property within this state, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States.

(b) "Record" means document, book, paper, photograph, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in this article.

(c) "State record" means:

(1) A record of a department, office, commission, board or other agency, however designated, of the state government.

(2) A record of the state Legislature.

(3) A record of any court of record, whether of statewide or local jurisdiction.

(4) Any record designated or treated as a state record under state law.

(d) "Local record" means a record of a county, city, town, authority or any public corporation or political entity whether organized and existing under charter or under general law unless the record is designated or treated as a state record under state law.
(e) "Agency" means any department, office, commission, board or other unit, however designated, of the executive branch of state government.

(f) "Preservation duplicate" means a copy of an essential state record which is used for the purpose of preserving such state record pursuant to this article.

§5A-8-4. Categories of records to be preserved.

1 State or local records which are within the following categories are essential records which shall be preserved pursuant to this article:

2 Category A. Records containing information necessary to the operation of government in the emergency created by a disaster.

3 Category B. Records not within category A but containing information necessary to protect the rights and interest of persons or to establish and affirm the powers and duties of governments in the resumption of operations after a disaster.

§5A-8-5. State records administrator.

1 The secretary of the department of administration is hereby designated the state records administrator, hereinafter called the administrator. The administrator shall establish and administer in the department of administration of the executive branch of state government a records management program, which will apply efficient and economical management methods to the creation, utilization, maintenance and retention, preservation and disposal of state records; and shall establish and maintain a program for the selection and preservation of essential state records and shall advise and assist in the establishment of programs for the selection and preservation of essential local records.

§5A-8-6. Records management and preservation advisory committee.

1 A records management and preservation advisory committee is continued within the department of
administration, to advise the administrator and to perform such other duties as this article requires. The records management and preservation advisory committee shall be composed of the following members: The governor, auditor, attorney general, president of the Senate, speaker of the House of Delegates, the chief justice of the supreme court of appeals, a judge of a circuit court to be appointed by the governor, the director of the office of emergency services, and the director of the section of archives and history of the division of culture and history, or their respective designated representatives. The advisory committee shall designate one of its members to be chairman, and it shall adopt rules for the conduct of its business. The advisory committee shall meet whenever called by its chairman or the administrator. The members of the advisory committee shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the advisory committee; except that in the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state.

§5A-8-7. Duties of administrator.

The administrator shall, with due regard for the functions of the agencies concerned:

(a) Establish standards, procedures, and techniques for effective management of records.

(b) Make continuing surveys of paperwork operations and recommend improvements in current records management practices including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing records.

(c) Establish standards for the preparation of schedules providing for the retention of state records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, legal, or fiscal value to warrant their further keeping.
(d) Select the state records which are essential and determine their category pursuant to this article. In accordance with the rules and regulations promulgated by the administrator, each person who has custody or control of state records shall (1) inventory the state records in his custody or control; (2) submit to the administrator a report thereon containing such information as the administrator directs and containing recommendations as to which state records are essential; and (3) periodically review his inventory and his report and, if necessary, revise the report so that it is current, accurate and complete.

(e) Obtain reports from agencies as are required for the administration of the program.

§5A-8-8. Rules and regulations.

The administrator shall promulgate such rules and regulations concerning the management and selection and preservation of essential state records as are necessary or proper to effectuate the purpose of this article.


The head of each agency shall:

(a) Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.

(b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities.

(c) Submit to the administrator, in accordance with the standards established by him, schedules proposing the length of time each state record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency. The head of each agency also shall submit lists of state records in
custody that are not needed in the transaction of current
business and that do not have sufficient administrative,
legal or fiscal value to warrant their further keeping for
disposal in conformity with the requirements of section
ten of this article.

(d) Cooperate with the administrator in the conduct
of surveys made pursuant to the provisions of this
article.

(e) Comply with the rules, regulations, standards and
procedures issued by the administrator.

(f) First obtain the administrator's written approval
before purchasing or acquiring any equipment or
supplies used or to be used to store or preserve records
of the agency. If such approval is obtained the agency
will submit a requisition to the finance division together
with a copy of the administrator's said approval.

§5A-8-10. Essential state records—Preservation
duplicates.

(a) The administrator may make or cause to be made
preservation duplicates or may designate as preserva-
tion duplicates existing copies of essential state records.
A preservation duplicate shall be durable, accurate,
complete and clear, and a preservation duplicate made
by means of photography, microphotography, photocop-
ying, film or microfilm shall be made in conformity with
the standards prescribed therefor by the administrator.

(b) A preservation duplicate made by a photographic,
photostatic, microfilm, microcard, miniature photogra-
phic, or other process which accurately reproduces or
forms a durable medium for so reproducing the original,
shall have the same force and effect for all purposes as
the original record whether the original record is in
existence or not. A transcript, exemplification or
certified copy of such preservation duplicate shall be
deemed for all purposes to be a transcript, exemplifi-
cation or certified copy of the original record.

§5A-8-11. Essential state records—Safekeeping.

(a) The administrator shall prescribe the place and
manner of safekeeping of essential state records and preservation duplicates and may establish, with the approval of the Legislature, storage facilities therefor. The administrator may provide for storage outside the state.

(b) When in the opinion of the administrator the legally designated or customary location of an essential state record is such that the essential state record may be destroyed or unavailable in the event of a disaster caused by an enemy of the United States:

(1) The administrator shall store a preservation duplicate at another location and permit such state record to remain at its legally designated or customary location; or

(2) The administrator shall store such state record at a location other than its legally designated or customary location and deposit at the legally designated or customary location a preservation duplicate for use in lieu of the state record; or

(3) The administrator may store such state record at a location other than its legally designated or customary location, without providing for a preservation duplicate, upon a determination that it is impracticable to provide for a preservation duplicate and that the state record is not frequently used. Such determination shall be made by the administrator and the regularly designated custodian of such state record, but if they disagree the determination shall be made by the administrator.

(c) The requirements of subsection (b) of this section shall not prohibit the administrator from removing an essential state record or preservation duplicate from the legally designated or customary location of the state record if a disaster caused by an enemy of the United States has occurred or is imminent.

§5A-8-12. Essential state records—Maintenance, inspection and use.

(a) The administrator shall properly maintain essential state records and preservation duplicates stored by him.
(b) An essential state record or preservation duplicate stored by the administrator may be recalled by the regularly designated custodian of the state record for temporary use when necessary for the proper conduct of the office and shall be returned by such custodian to the administrator immediately after such use.

(c) When an essential state record is stored by the administrator, the administrator, upon request of the regularly designated custodian of the state record, shall provide for its inspection, or for the making or certification of copies thereof, and such copies when certified by the administrator shall have the same force and effect as if certified by the regularly designated custodian.


When a state record is required by law to be treated in a confidential manner and is an essential state record, the administrator in effectuating the purpose of this article with respect to such state record, shall protect its confidential nature.


The administrator shall review periodically but at least once a year the program for the selection and preservation of essential state records, including the classification of records and the provisions for preservation duplicates, and for safekeeping of essential state records or preservation duplicates to ensure that the purposes of this article are accomplished.

§5A-8-15. Records management and preservation of local records.

The governing body of each county, city, town, authority or any public corporation or political entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. Such governing body may, as far as practical, follow the program established for the management and preservation of state records. The administrator shall, upon the request of a local governing body, provide
106 ADMINISTRATION 

§5A-8-16. Assistance to legislative and judicial branches.

Upon request, the records administrator shall assist and advise in the establishment of records management programs in the legislative and judicial branches of state government and shall, as required by them, provide program services similar to those available to the executive branch of state government pursuant to the provisions of this article.

§5A-8-17. Disposal of records.

No record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the administrator and the director of the section of archives and history of the division of culture and history that the record has no further administrative, legal, fiscal, research or historical value.

§5A-8-18. Destruction of nonrecord materials.

Nonrecord materials or materials not included within the definition of records as contained in this article may, if not otherwise prohibited by law, be destroyed at any time by the agency in possession of such materials without the prior approval of the administrator. The administrator may formulate procedures and interpretations to guide in the disposal of nonrecord materials.

§5A-8-19. Annual report.

The administrator shall make an annual written report to the governor for transmission to the Legislature. The report shall describe the status and progress of programs established pursuant to this article and shall include the recommendations of the administrator for improvements in the management and preservation of records in state government.

ARTICLE 9. VOLUNTARY GILDING THE DOME CHECK-OFF PROGRAM.

§5A-9-3. Contributions credited to special fund.

The tax division of the department of tax and revenue
shall determine by the first day of July of each year the total amount designated pursuant to this legislation and shall report such amount to the state treasurer who shall credit such amount to a special department of administration fund.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-17. Liabilities incurred by state boards, commissions, officers or employees which cannot be paid out of current appropriations.

Except as provided in this section, it shall be unlawful for any state board, commission, officer or employee:

1. To incur any liability during any fiscal year which cannot be paid out of the then current appropriation for such year or out of funds received from an emergency appropriation; or
2. To authorize or to pay any account or bill incurred during any fiscal year out of the appropriation for the following year: Provided, That nothing contained herein shall prohibit entering into a contract or lease for buildings, land and space, the cost of which exceeds the current year’s appropriation, even though the amount is not available during the then current year, if the aggregate cost does not exceed the amount then authorized by the Legislature. Nothing contained herein shall repeal the provisions of the general law relating to the expiration of appropriations for buildings and land.

Any member of a state board or commission or any officer or employee violating any provision of this section shall be personally liable for any debt unlawfully incurred or for any payment unlawfully made.

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 3. INTEREST ON PUBLIC CONTRACTS.

§14-3-1. Payment of interest by the state on contracts when final payment is delayed.

All public contracts let in accordance with article
three, chapter five-a of the code or let by the state board of education, the university of West Virginia board of trustees, the board of directors of the state college system, state armory board or by any other board, agency or commission of the state, entered into on and after the first day of March, one thousand nine hundred sixty-nine, and prior to the first day of July, one thousand nine hundred ninety-one, except the state road commissioner, shall contain the following paragraph:

"Within ninety days after the completion of this contract is certified by the approving authority to be complete in accordance with terms of the plans or specifications, or both where appropriate, or is accepted by the authorized spending officer as complete, or is occupied by the owner, or is dedicated for public use by the owner, whichever occurs first, the balance due the contractor herein shall be paid in full. Should such payment be delayed for more than ninety days beyond the day the completion of this contract is certified by the authorized spending officer or is accepted by the owner as complete, or is occupied by the owner, or is dedicated for public use by the owner, said contractor shall be paid interest, beginning on the ninety-first day, at the current rate, as determined by the state tax commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code per annum on any unpaid balance: Provided, That whenever the approving authority reasonably determines that delay in completing the contract or in accepting payment for the contract is the fault of the contractor herein, the approving authority may accept and use the commodities or printing or the project may be occupied by the owner or dedicated for public use by the owner without payment of any interest on amounts withheld past the ninety-day limit."

All public construction contracts relating to roads or bridges let by the commissioner of the division of highways, entered into on and after the first day of March, one thousand nine hundred sixty-nine, and prior to the first day of July, one thousand nine hundred ninety-one, shall contain the following paragraph:
“Within one hundred fifty days after the approving authority notifies the contractor, in writing, of the final acceptance by such approving authority of the project for which this contract provides, the balance due the prime contractor shall be paid in full. Should such payment be delayed for more than one hundred fifty days beyond the date that the approving authority notifies the contractor of the final acceptance of the project in accordance with the terms of the contract and the plans and specifications thereof, said prime contractor shall be paid interest, beginning on the one hundred fifty-first day, at the current rate, as determined by the state tax commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code per annum on such unpaid balance: Provided, That if the prime contractor does not agree to the amount of money determined by the approving authority to be due and owing to the prime contractor and set forth on the final estimate document, and the approving authority makes an offer to pay the amount of the final estimate to the said prime contractor, then the prime contractor shall not be entitled to receive any interest on the amount set forth in said final estimate, but shall only be entitled to the payment of interest at the current rate, as determined by the state tax commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code per annum on the amount of money finally determined to be due and owing to the said prime contractor, less the amount of the final estimate that the approving authority had originally offered to pay to the said prime contractor.”

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-7. Director of personnel; appointment; qualifications; powers and duties.

§29-6-23. Special fund; appropriations; cost of administering article; acceptance of grants or contribution; disbursements.
§29-6-7. Director of personnel; appointment; qualifications; powers and duties.

(a) The secretary of the department of administration shall appoint the director. The director shall be a person knowledgeable of the application of the merit principles in public employment as evidenced by the obtainment of a degree in business administration, personnel administration, public administration or the equivalent and at least five years of administrative experience in personnel administration.

(b) The director shall:

(1) Consistent with the provisions of this article administer the operations of the division, allocating the functions and activities of the division among sections as the director may establish;

(2) Maintain a personnel management information system necessary to carry out the provisions of this article;

(3) Supervise payrolls and audit payrolls, reports or transactions for conformity with the provisions of this article;

(4) Plan, evaluate, administer and implement personnel programs and policies in state government and to political subdivisions after agreement by the parties;

(5) Supervise the employee selection process and employ performance evaluation procedures;

(6) Develop programs to improve efficiency and effectiveness of the public service, including, but not limited to, employee training, development, assistance and incentives;

(7) Establish pilot programs and other projects for a maximum of one year outside of the provisions of this article, subject to approval by the board, to be included in the annual report;

(8) Establish and provide for a public employee interchange program and may provide for a voluntary employee interchange program between public and private sector employees;
(9) Establish an internship program;

(10) Assist the governor and secretary of the department of administration in general work force planning and other personnel matters;

(11) Make an annual report to the governor and Legislature and all other special or periodic reports as may be required;

(12) Assess cost for special or other services;

(13) Recommend rules to the board for implementation of this article; and

(14) Conduct schools, seminars or classes for supervisory employees of the state regarding handling of complaints and disciplinary matters and the operation of the state personnel system.

§29-6-23. Special fund; appropriations; cost of administering article; acceptance of grants or contribution; disbursements.

For the operation of the division, there is hereby created in the state treasury a special revolving fund to be known and designated as the “division of personnel fund”. This fund shall consist of appropriations made by the Legislature, funds transferred in accordance with the provisions of section nine of this article, funds received for personnel services rendered to other agencies, departments, divisions and units of state and local government, and funds received by grant or contribution from the federal government or any other entity which funds the division is hereby authorized to receive: Provided, That for fiscal year one thousand nine hundred ninety all funds remaining in account numbers 5840-00, 5840-35 and 5840-17 shall be transferred to the division of personnel fund on the effective date of this article. Each agency, department, division or unit of state or local government served by the division of personnel is hereby authorized and directed to transmit to the division for deposit in said special fund the charges made by the division of personnel for personnel services rendered, such charges to be those fixed in a schedule or schedules prepared by the director and
approved by the secretary of the department of administration. Disbursements from the fund shall be made in accordance with an approved expenditure schedule as provided by article two, chapter five-a of this code and shall be made under the direct supervision of the director.

The director shall maintain accurate records reflecting the cost of administering the provisions of this article.

CHAPTER 3
(H. B. 4352—By Delegates M. Burke and Riggs)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to applicant for permit to furnish surety bond for benefit consignor.

Be it enacted by the Legislature of West Virginia:

That section eight, article two-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 2A. PUBLIC MARKETS.


Before the granting of any such permit, the applicant shall execute and deliver to the commissioner a surety bond conditioned as the commissioner may require and acceptable to him, payable to the state of West Virginia, for the benefit of the consignors at said market of livestock, poultry, and other agricultural and horticultural products, who have been wronged or damaged by any fraud or fraudulent practices of the market and so adjudged by a court of competent jurisdiction and who shall have the right of action for damage for compensation against such bond. A holder of a permit, who shall have been in operation not less than twelve months, shall
maintain and deliver such bond to said commissioner as
aforesaid in an amount not to exceed one hundred
twenty percent of the average of its sales during the
preceding calendar year. A holder of a permit, who shall
have been in operation less than twelve months, shall
maintain and deliver such bond to said commissioner as
aforesaid in an amount established by the commissioner,
but in no case shall the bond be less than the average
bond maintained by all other public markets in the state
that have been in operation more than twelve months.

The form of the bond shall be approved by the
commissioner and may include, at the option of the
applicant, surety bonding, collateral bonding (including
costs and securities), establishment of an escrow account
or a combination of these methods. If collateral bonding
is used, the operator may elect to deposit cash or
collateral securities or certificates as follows: Bonds of
the United States or its possessions, of the federal land
bank or of the homeowners' loan corporation; full faith
and credit general obligation bonds of the state of West
Virginia, or other states, and of any county, district or
municipality of the state of West Virginia or other
states; or certificates of deposit in a bank in this state,
which certificates shall be in favor of the department.
The cash deposit or market value of such securities or
certificates shall be equal to or greater than the sum of
the bond. It shall be the duty of the applicant to ensure
the market value of such bonds are sufficient. The
commissioner shall, upon receipt of any such deposit of
cash, securities or certificates, promptly place the same
with the treasurer of the state of West Virginia whose
duty it shall be to receive and hold the same in the name
of the state in trust for the purpose for which the deposit
is made when the permit is issued. The applicant
making the deposit shall be entitled from time to time
to receive from the state treasurer, upon the written
approval of the commissioner, the whole or any portion
of any cash, securities or certificates so deposited, upon
depositing with him in lieu thereof, cash or other
securities or certificates of the classes herein specified
having value equal to or greater than the sum of the
bond.
AN ACT to amend and reenact section one, article eight, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state funded raise for cooperative extension service employees.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, 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 8. COOPERATIVE EXTENSION WORKERS.

§19-8-1. County extension service committee; composition; organization; duties and responsibilities; employment and compensation of extension workers.

1 The county extension service committee shall be composed of (a) the president of the county farm bureau, (b) the president of the county extension homemakers council, (c) the president of the county Four-H leaders' association, (d) a county commissioner designated by the president of the county commission, (e) a member of the county board of education designated by the president of the county board of education, (f) a county representative of the grange, and (g) two members who are residents of the county to be appointed by the board of advisors of West Virginia University for staggered terms of three years each beginning on the first day of July, and in making these appointments the board of advisors shall appoint one member designated by any other active farm organization in the county not already represented by virtue of this section. If any of the above-named organizations do not exist in the county, the board of advisors of West Virginia University may appoint an additional member for each such vacancy.
The committee shall annually elect from its membership a chairperson and a secretary.

It shall each year be the duty and responsibility of the county extension service committee:

(1) To enter into a memorandum of agreement with the cooperative extension service of West Virginia University for the employment of county cooperative extension workers.

(2) To prepare a memorandum of agreement with the county commission and with the county board of education for their financial support of extension work.

(3) To give guidance and assistance in the development of the county cooperative extension service program and in the preparation of the annual plan of work for the county.

Such county cooperative extension service committee may on or before the first day of July of each year file with the county commission a written memorandum of agreement with the cooperative extension service of West Virginia University for the employment for the next fiscal year of county extension agents, extension homemaker agents, associate or assistant agents, and clerical workers.

The county cooperative extension service committee may also file on or before the first day of July of each year with the county board of education a written memorandum of agreement with the cooperative extension service of West Virginia University for the employment for the next fiscal year of Four-H club or youth development agents, associate or assistant agents, and clerical workers.

If such agreement or agreements are so filed, the county commission and the county board of education of such county, or either of them, may annually enter into such agreement or agreements for the employment for the next fiscal year of such county extension agents, extension homemaker agents, Four-H club or youth development agents, associate or assistant agents, and clerical workers, or any of them, as may be nominated
by the cooperative extension service of West Virginia
University, and approved in writing by at least five
members of the county extension service committee.

Salaries and expenses of all such county extension
workers shall be paid by the cooperative extension
service, the county commission, and the board of
education, or jointly out of such appropriations as are
made by the Legislature, the county commission and the
board of education, separately or in conjunction with
such federal acts as do now, or may hereafter, provide
funds for such purpose. That part of salaries, travel and
general office expense to be provided by the county
commission according to the approved memorandum
shall be paid from general county funds.

Whenever the cooperative extension service is re-
quired by law or legislative intent to grant a salary
increase to its employees, the state budget shall include
such additional funds as may be necessary to fully fund
such salary increase. It is the intent of this section that
the cooperative extension service shall not be dependent
upon county or federal funds or upon the other funds
of the institution or the governing board to meet the
costs of such a salary increase required by law or
legislative intent regardless of the source of the
employee’s base salary: Provided, That any decrease by
the county of base salary levels of county extension
employees, as exists on June thirtieth of the year
preceeding the year the salary increase is authorized,
shall not be funded by the state.

CHAPTER 5
(H. B. 4349—By Delegates Stemple and Mezzatesta)

[Passed February 15, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and sixteen,
article twelve, chapter nineteen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to providing an additional definition
for the word “dealer”, and increasing the penalty for
violations of this article.
Be it enacted by the Legislature of West Virginia:

That sections two and sixteen, article twelve, 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 12. INSECT PESTS, PLANT DISEASES AND NOXIOUS WEEDS.

§19-12-2. Definitions.

§19-12-16. Penalty for violation of article, rules and regulations; duties of prosecuting attorney.

§19-12-2. Definitions.

1. The following definitions shall apply in the interpretation and enforcement of this article. All words shall be construed to import either the plural or the singular, as the case demands:

(a) "Department" means the department of agriculture of the state of West Virginia.

(b) "Commissioner" means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives.

(c) "Agent" means any person soliciting orders for nursery stock under the partial or full control of a nurseryman or dealer.

(d) "Dealer" means any person who buys, receives on consignment or otherwise acquires and has in his possession nursery stock which that person has not grown from propagative material such as tissue culture plants, cuttings, liners, seeds or transplanted nursery stock for the purpose of offering or exposing for sale, reselling, reshipping or distributing same. Each separate location shall constitute a dealership.

(e) "Nursery" means any grounds or premises on or in which nursery stock is being propagated or grown for sale or distribution, including any grounds or premises on or in which nursery stock is being fumigated, treated, packed or stored or otherwise prepared or offered for sale or movement to other localities.

(f) "Nurseryman" means and includes any person who owns, leases, manages or is in charge of a nursery.
(g) "Nursery stock" means all trees, shrubs and woody vines, including ornamentals, bush fruits, grapevines, fruit trees and nut trees, whether cultivated, native or wild, and all buds, grafts, scions, fruit pits and cuttings from such plants. It also means sod, including sod plugs and sod-producing plants, and such herbaceous plants, including strawberry plants, narcissus plants and narcissus bulbs as the commissioner declares by regulation to be so included whenever he considers control of the movement of such plants and bulbs necessary for the control of any destructive plant pest.

Florists' or greenhouse plants for inside culture or use, unless declared otherwise by the commissioner, as herein authorized, shall not be considered nursery stock, except that all woody plants, whether greenhouse or field grown, if for outside planting, are hereby defined as nursery stock.

(h) "Person" means any individual or combination of individuals, partnership, corporation, company, society, association, governmental organization, or other business entity and each officer, agent or employee thereof.

(i) "Plant and plant products" means trees, shrubs, vines; forage, fiber, cereal plants and all other plants; cuttings, grafts, scions, buds and lumber and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber and all other parts of plants and plant products.

(j) "Plant pest" means any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.

(k) "Host" means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.
(l) "Regulated article" means any article of any character, as described in the quarantine or other order of the commissioner carrying or capable of carrying a pest.

(m) "Certificate" means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with a pest.

(n) "Permit" means a document issued or authorized by the commissioner to provide for a movement of regulated articles to restricted destinations for limited handling, utilization or processing.

(o) "Noxious weed" means rosa multiflora, commonly known as multiflora rose or parts thereof; cannabis sativa L., commonly known as marihuana or any parts thereof and opium poppy or any parts thereof.

(p) "Infected area" means any area of uncontrolled growth of plant pests, other insects or noxious weeds, and any area of cultivated or controlled growth of cannabis sativa L., commonly known as marihuana, or of opium poppy.

(q) "Quarantine" means a legal declaration by the commissioner which specifies:

(1) The noxious weeds.

(2) The articles to be regulated.

(3) Conditions governing movement.

(4) The area or areas quarantined.

(5) Exemptions.

§19-12-16. Penalty for violation of article, rules and regulations; duties of prosecuting attorney.

Any person violating any of the provisions of this article, or the rules or regulations adopted thereunder, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars.

It shall be the duty of the prosecuting attorney of the county in which the violation occurred to represent the department of agriculture, to institute proceedings and to prosecute the person charged with such violation.
AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine and ten, article fifteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions of words and terms, registration of brands; registration fees; required labeling; toxic materials prohibited; inspection fee; report of tonnage; annual report; inspection; sampling; analysis; embargo; suspension or cancellation of registration; seizure of materials; violations; regulations; lime fund and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15A. WEST VIRGINIA AGRICULTURAL LIMING MATERIALS LAW.

§19-15A-2. Registration of brands; registration fees.
§19-15A-4. Inspection fee; report of tonnage; annual report.
§19-15A-5. Inspection; sampling; analysis.
§19-15A-6. Embargo; suspension or cancellation of registration; seizure of materials.


1 As used in this article:

2 (a) "Agricultural liming material" means a product
3 with calcium or calcium and magnesium compounds
4 which are capable of neutralizing soil acidity and which
5 are intended to be used to neutralize soil acidity.
(b) "Brand" means the term, designation, trademark, product name or other specific designation under which individual agricultural liming materials are offered for sale.

(c) "Bulk" means agricultural liming materials in nonpackaged form.

(d) "Burnt lime" means a material, made from limestone which consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide.

(e) "Calcium carbonate equivalent" means the acid neutralizing capacity of agricultural liming material expressed as the weight percentage of calcium carbonate.

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

(g) "Distributor" means any person who sells or offers for sale agricultural liming products that are registered pursuant to this article. Exempted from this definition are persons who retail registered products to the ultimate consumer.

(h) "Dolomite" means an agricultural liming material composed chiefly of carbonates of magnesium and calcium in substantially equimolar (1-1.19) proportions.

(i) "Embargo" means an order prohibiting the sale, processing, mixing, transporting and use of any product.

(j) "Fineness classification" means the designation given to the product by the percentage by weight of the material which will pass U.S. standard sieves of specific sizes.

(k) "Ground shells" means a material obtained by grinding the shells of mollusks.

(l) "High calcic liming material" means an agricultural liming material containing at least twenty-five percent calcium and at least ninety-one percent of the total calcium and magnesium is calcium.

(m) "High magnesic liming material" means an
agricultural liming material containing at least six percent magnesium.

(n) "Hydrated lime" means a material, made from burnt lime, which consists essentially of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide and magnesium hydroxide, or both magnesium oxide and magnesium hydroxide.

(o) "Label" means any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

(p) "Limestone" means a material consisting essentially of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

(q) "Marl" means a granular or loosely consolidated earthy material composed largely of shell fragments and calcium carbonate precipitated in ponds.

(r) "Percent or percentage" means percent or percentage by weight.

(s) "Person" means any individual, partnership, association, fiduciary, firm, corporation or any organized group of persons whether incorporated or not.

(t) "Registrant" is a person who registers agricultural liming materials by product and is responsible for the guarantee of such product.

(u) "Slag" means any industrial waste or by-product containing calcium or calcium and magnesium in forms that will neutralize soil acidity.

(v) "Type" means the designation given to the product from its source material.

(w) "Ton" means a weight of two thousand pounds avoirdupois.

(x) "Weight" means the weight of undried liming material as offered for sale.

§19-15A-2. Registration of brands; registration fees.

(a) No agricultural liming material shall be used, sold or offered for sale in the state unless it has been registered with the commissioner.

(a) No person shall sell, offer to sell, or expose for sale in the state any agricultural liming materials which do not have affixed to the outside of each package in a conspicuous manner a plainly printed, stamped or otherwise marked label, tag or statement, or in the case of bulk sales, a delivery invoice including at least the following:

(1) The name and principal business address of the manufacturer or distributor.

(2) The brand name of the agricultural liming material.

(3) The identification of the product as to the type of liming material.

(4) The net weight of the agricultural liming material.

(5) The minimum percentage of calcium oxide and magnesium oxide or calcium carbonate and magnesium carbonate or total elemental calcium and total elemental magnesium.

(6) The calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists.
(7) The minimum percent by weight passing through United States standard sieves.

(8) The fineness classification of the material.

(b) A copy of the statement provided for in subsection (a) shall be posted for each brand sold in bulk at each site where purchase orders are accepted or from which deliveries for such liming materials are made.

(c) No information or statement shall appear on any package, label, delivery invoice or advertisement which gives a false or misleading impression to the purchaser as to the quality, analysis, type or composition of the liming material.

(d) When agricultural liming material has been adulterated subsequent to packaging, labeling or loading thereof and before delivery has been made to the consumer, conspicuous, plainly worded notice to that effect shall be affixed by the vendor to the package or delivery invoice to identify the kind and degree of adulteration therein: Provided, That no agricultural liming material shall be sold or offered for sale in the state which contains toxic materials in quantities injurious to plants or animals when applied according to directions.

§19-15A-4. Inspection fee; report of tonnage; annual report.

(a) The amount of the inspection fee shall be clearly stated on each sales invoice prepared in normal course of business by either a registrant or distributor reflecting the amount of said fee and the payor of the same.

(b) Within thirty days following the thirtieth day of June and the thirty-first day of December of each year, each registrant and distributor shall submit on a form furnished by the commissioner a summary of tons of each agricultural liming material sold or distributed by him in the state during the previous six months' period. Such report of tonnage shall be accompanied by payment of an inspection fee at the rate of five cents per ton. If such tonnage, or portion thereof, has been paid
by another person, documentation by invoice must
accompany such report. The minimum semiannual
payment shall be ten dollars. The minimum fee is
waived if the total amount of the semi-annual inspection
fee due is two dollars or less. A penalty of ten percent
of the fees due or ten dollars whichever is greater shall
be assessed a registrant or distributor whose report is
not received by the fifteenth day of August and the
fifteenth day of February each calendar year.

(c) The commissioner shall publish and distribute at
least annually to each agricultural liming material
registrant, distributor and other interested persons, a
composite report showing the net tons of agricultural
liming material sold in this state during the preceding
period. This report shall in no way divulge information
that can be related to the business of any individual
registrant.

§19-15A-5. Inspection; sampling; analysis.

(a) It shall be the duty of the commissioner to audit,
inspect, sample, analyze and test agricultural liming
materials used, sold or offered for sale within the state
as he may deem necessary to determine whether such
agricultural liming materials are in compliance with
the provisions of this article and for this purpose the
commissioner is authorized to enter upon any public or
private premises or carriers during reasonable times to
inspect and sample liming materials, and to inspect
records related to their distribution.

(b) The methods of analysis and sampling shall be
those approved by the association of official analytical
chemists or those approved by the commissioner.

(c) The results of official analyses of agricultural
liming materials shall be distributed by the commis-
sioner as he may deem necessary to carry out the
enforcement of this article.

(d) The commissioner shall, on request, provide the
registrant with a portion of the official sample:
Provided, That the request be made within thirty days
of the assessment of a violation.
(e) The commissioner in determining whether any agricultural liming material is deficient in guarantee shall be guided solely by the official sample.

§19-15A-6. Embargo; suspension or cancellation of registration; seizure of materials.

(a) The commissioner is authorized to suspend or cancel the registration of any brand of agricultural liming material and to refuse the application for registration of any brand of agricultural liming material upon being presented satisfactory evidence that the registrant has used false, fraudulent or deceptive practices in the evasion or attempted evasion of the provisions of this article or any regulation issued thereunder: Provided, That no registration shall be suspended, revoked or refused until the registrant has been given an opportunity to appear for a hearing before the commissioner.

(b) The commissioner may issue an embargo order to the owner or custodian of any lot of agricultural liming material when he finds said agricultural liming material is being offered or exposed for sale in violation of any of the provisions of this article or the regulations issued thereunder and such order shall remain in effect until it has been rescinded in writing by the commissioner: Provided, That the commissioner shall not rescind any embargo order until the requirements of this article have been complied with and all costs and expenses incurred in connection therewith have been paid.

(c) Any agricultural liming material found to be in violation of the provisions of this article shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the county in which such agricultural liming material is located. If the court orders the condemnation of such material it shall be disposed of in a manner consistent with the quality of the agricultural liming material and the laws of the state. In no instance shall the disposition of said agricultural liming material be ordered by the court without first giving the claimant an opportunity to
apply to the court for release of said agricultural liming
material or for permission to process or relabel said
agricultural liming material to bring it in compliance
with this article.

§19-15A-7. Deficiency assessment, tolerances and
payment.

(a) A registrant shall pay a deficiency assessment in
accordance with the provisions of this section for each
lot of agricultural liming material found to be deficient
in its guaranteed analysis. Deficiencies existing in more
than one component shall be considered additional
violations.

(b) When the calcium carbonate equivalent is found
to be over five percent deficient from the stated
guarantee, the registrant shall pay a deficiency assess-
ment equal to two times the actual cash value of the
deficiency based on the retail price per ton at the
distribution point where the official sample was
collected. The cash value of the deficiency is calculated
by multiplying the actual percent deficiency, less the
five percent taken, times the retail price per ton, times
the tons in the lot sampled. The minimum assessed
penalty shall be fifty cents per ton in the lot sampled.

(c) When the product is found to be over five percent
deficient in one or more of the guarantees for fineness
classification, a penalty shall be assessed at one dollar
per ton in the lot sampled.

(d) When the product is found to be over ten percent
deficient for one or more of the following guarantees:
Calcium oxide, magnesium oxide, calcium carbonate,
magnesium carbonate, total elemental calcium or total
elemental magnesium, a penalty shall be assessed at one
dollar per ton in the lot sampled.

(e) Such deficiency assessment shall be paid to the
ultimate consumer of the product, with receipts for the
payment thereof being delivered to the commissioner as
evidence of payment being made. If said ultimate
consumer is not known, the penalty assessed shall be
paid to the commissioner and deposited as set forth in
section nine of this article.
(f) If any deficiency assessment has not been paid within sixty days of the notice of such assessment, then a late payment penalty of ten percent of the original penalty assessment will be added for each one hundred eighty days such assessment remains unpaid.


The commissioner is authorized to issue, after public hearing following due notice, and in accordance with the provisions of chapter twenty-nine-a of this code, such regulations in addition to any others mentioned elsewhere in the article, as he deems necessary to implement the full intent and meaning of this article, including, but not limited to, minimum acceptable fineness classifications and minimum acceptable calcium carbonate equivalents for agricultural liming materials.


All fees collected by the commissioner under the provisions of this article shall be placed in a special fund with the state treasurer to be known as the lime inspection fund and shall be expended on order of the commissioner for the administration of the program.


Any person violating any of the provisions of this article or the regulations issued thereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred nor more than three hundred dollars for the first offense and not less than three hundred nor more than one thousand dollars for each subsequent offense.

CHAPTER 7
(S. B. 419—By Senator Harman)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to repeal article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact article sixteen-a of said chapter, relating to the "West Virginia Pesticide Control Act of 1990"; declaration of purpose; legislative finding; definitions; powers and duties of the commissioner of agriculture; registration of pesticides and fees; confidentiality of trade secrets; refusal or cancellation of registration; annual pesticide business license; financial security requirement; businesses required to keep records; restricted use pesticides; application of this article to government entities; liability; private and commercial applicator's license and certificate; registered technician certificate; renewals; exemptions; reexamination or special examinations; employee training program; reciprocal agreement; denial, suspension or revocation of license, permit or certification; civil penalty; pesticide accidents; incidents or loss; legal recourse of aggrieved persons; violations; criminal penalties; civil penalties; negotiated agreements; creation of pesticide control fund in state treasury; disposition of certain fees in the general revenue fund; issuance of subpoenas; right of commissioner to enter and inspect; enforcement of article; issuance of stop-sale, use or renewal orders; judicial review; and issuing warnings.

Be it enacted by the Legislature of West Virginia:

That article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article sixteen-a, chapter nineteen of said code be amended and reenacted to read as follows:

ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.

§19-16A-2. Declaration of purpose; legislative finding.
§19-16A-4. Powers and duties of the commissioner.
§19-16A-5. Registration of pesticides; fees; confidentiality of trade secrets.
§19-16A-6. Refusal or cancellation of registration.
§19-16A-10. Restricted use pesticides.
§19-16A-11. Application of this article to government entities; liability.
§19-16A-12. Private and commercial applicator's license and certificate; registered technician certificate.
§19-16A-15. Reexamination or special examinations.
§19-16A-16. Employee training program.
§19-16A-17. Reciprocal agreement.
§19-16A-18. Denial, suspension or revocation of license, permit or certification; civil penalty.
§19-16A-19. Pesticide accidents; incidents or loss.
§19-16A-20. Legal recourse of aggrieved persons.
§19-16A-22. Criminal penalties; civil penalties; negotiated agreement.
§19-16A-23. Creation of pesticide control fund in state treasury; disposition of certain fees to general revenue fund.
§19-16A-25. Right of commissioner to enter and inspect; enforcement of article.
§19-16A-26. Issuance of stop-sale; use or renewal orders; judicial review.
§19-16A-27. Issuing warnings.


1 This article shall be known as the "West Virginia Pesticide Control Act of 1990".

§19-16A-2. Declaration of purpose; legislative finding.

1 The purpose of this article is to regulate and control pesticides in the public interest, by their registration, use and application. The Legislature finds that pesticides perform a vital function in modern society because they control insects, fungi, nematodes, rodents and other pests which ravage and destroy our food and fiber, which serve as vectors of disease, and which otherwise constitute a nuisance in the environment or the home; they control weeds which compete in the production of foods and fiber, disrupt the supply of energy, render highways unsafe and which otherwise are unwanted elements in our environment; and they regulate plant growth to enhance both the quality and quantity of our food and fiber and to facilitate its harvest. Pesticides, however, may be rendered ineffective, may cause injury to man or may cause unreasonable, adverse effects on the environment if not properly used. They may injure man or animals either by direct poisoning or by the gradual accumulation of pesticide residues in their tissues. Crops or other plants may be affected by their
improper use. The misapplication, the drifting or washing of pesticides into streams or lakes may cause appreciable damage to aquatic life. A pesticide applied for the purpose of killing pests in a crop, which is not itself injured by the pesticide, may drift and injure other crops or nontarget organisms with which it comes in contact. Therefore, it is deemed necessary to provide for the control of pesticides.

Nothing in this article shall be construed as permitting municipalities or counties to enact laws or ordinances regarding pesticide control.


As used in this article:

(1) "Active ingredient" means:

(A) In the case of pesticides other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate insects, nematodes, fungi, rodents, weeds or other pests;

(B) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(C) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

(D) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissues.

(2) "Agriculture commodity" means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

(3) "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish and shell fish.
(4) "Adulterated" means when the strength or purity of any pesticide falls below or is in excess of the professed standard or quality as expressed on labeling under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(5) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(6) "Certified applicator" means any person who is certified under this article to use or supervise the use of any restricted use pesticides or general use pesticides for hire.

(7) "Certified public applicator" means a licensed applicator who applies "restricted use pesticides or general use pesticides for hire" as an employee of a state agency, municipal corporation or other governmental agency. This term does not include employees who work only under the direct supervision of a certified public applicator.

(8) "Commercial applicator" means a certified applicator (whether or not he or she is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as defined under the definition of "private applicator".

(9) "Commissioner" means the commissioner of agriculture of the state of West Virginia and his or her duly authorized representatives.

(10) "Defoliant" means any substance or mixture of substances intended for causing the leaves of foliage to drop from a plant, with or without causing abscission.

(11) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(12) "Device" means any instrument or contrivance (other than a firearm) intended for trapping, destroy-
ing, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the commissioner, but not including treated wood products or equipment used for the application of pesticides when sold separately therefrom.

(13) "Direct supervision" means that unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the verifiable instructions and control of a certified applicator who is available when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

(14) "Environment" includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

(15) "Fumigant or fumigation" means any substance which, by itself or in combination with any other substance, emits or liberates a gas or gases, fumes or vapors, which gas or gases, fumes or vapors, when liberated and used, will destroy vermin, rodents, insects and other pests, and are usually lethal, poisonous, noxious or dangerous to human life.

(16) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi or plant disease.

(17) "Fungus" means any nonchlorophyll-bearing thallophytes (that is, any nonchlorophyll-bearing plant of a lower order than mosses and liverworts), as, for example, rust, smut, mildew, mold, yeast, bacteria and virus, except those on or in living man or other animals and except those on or in processed food, beverages or pharmaceuticals.

(18) "General use pesticide" means any pesticide not designated as restricted use by the administrator, United States environmental protection agency or a state restricted use pesticide by the commissioner.
(19) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repell-
ing or mitigating any weed.

(20) "Inert ingredient" means an ingredient which is not an active ingredient.

(21) "Ingredient statement" means a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide, and in case the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(22) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, either winged or wingless forms, as, for example, beetles, bugs, bees, flies, aphids and termites, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes and wood lice.

(23) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repell-
ing or mitigating any insects which may be present in any environment whatsoever.

(24) "Label" means the written, printed or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device.

(25) "Labeling" means all labels and other written, printed, graphic matter or advertising:

(A) Upon the pesticide or device or any of its contain-
ers or wrappers;

(B) Accompanying the pesticide or device at any time;

(C) To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to
current official publications of the United States departments of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides; and

(D) Conveyed in any public media such as newspapers, periodicals, radio or television, relative to the offering for sale of any pesticide or device.

(26) “Land” means all land and water areas, including airspace and all plants, animals, structures, buildings, contrivances and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(27) “Misbranded” means any pesticide or device if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; or

(A) If it is an imitation of or is offered for sale under the name of another pesticide;

(B) If its labeling bears any reference to registration under this article;

(C) If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate for the protection of the public;

(D) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals, vegetation and useful invertebrate animals;

(E) If the label does not bear an ingredient statement on that part of the immediate container of the retail package which is presented or displayed under customary conditions of purchase, and on the outside container or wrapper, if any, through which the ingredient statement on the immediate container cannot be clearly read;
(F) If any word, statement or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statement, designs or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(G) If in the case of an insecticide, nematocide, fungicide or herbicide when used as directed or in accordance with commonly recognized practice it is injurious to living man or other vertebrate animals, except weeds to which it is applied, or to the person applying such pesticide; or

(H) If in the case of a plant regulator, defoliant or desiccant when used as directed it is injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide: Provided, That physical or physiological effects on plants or parts thereof are not deemed to be injury, when this is the purpose for which the plant regulator, defoliant or desiccant was applied, in accordance with the label claims and recommendations.

(28) “Name” as applied to the active ingredient shall be designated by an accepted chemical name and in addition the accepted common name, or by a common name promulgated by the commissioner. It is recommended that the commissioner adopt the nomenclature approved by the interdepartmental committee on pest control or the American standards committee or any national committee similarly functioning.

(29) “Nematode” means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform or sac like bodies covered with cuticle and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(30) “Nematocide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes.
(31) "Permit" means a written certificate, issued by the commissioner authorizing the use of certain restricted use pesticides or state restricted use pesticides.

(32) "Person" means any individual, partnership, association, fiduciary, corporation or any organized group of persons whether incorporated or not.

(33) "Pest" means any insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism (except viruses, bacteria or other microorganisms on or in living man or other living animals) which is declared to be a pest by the commissioner.

(34) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any undesirable insects, rodents, nematodes, fungi, weeds and other forms of plant or animal life or viruses, except viruses on or in living man or other animals or which the commissioner may declare to be a pest and any substance or mixture of substances intended for use as a plant regulator, defoliant, desiccant or herbicide.

(35) "Pesticide application business" means any person who owns or manages a pesticide application business which is engaged in the business of applying pesticides upon the lands of another (whether such person applies restricted use pesticides or other pesticides) and means each place for which the business of applying pesticides for hire is carried on, including a branch office, franchise location, suboffice or worker location of a larger business entity.

(36) "Pesticide business" means any person engaged in the business of distributing, applying or recommending the use of a product, storing, selling or offering for sale pesticides for distribution to the user. The term does not include wood treaters not for hire or businesses exempted by rule adopted pursuant to this article.

(37) "Pesticide dealer" means any person who sells, wholesales, distributes, offers or exposes for sale, exchanges, barters or gives away within or into this state any restricted use pesticide.
(38) "Plant regulator" means any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments.

(39) "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on property of another person.

(40) "Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination as a commercial applicator and is limited to application of general use pesticides. However, if he or she applies restricted use pesticides, he or she may do so only under the direct supervision of a certified commercial applicator.

(41) "Registrant" means the person registering any pesticide pursuant to the provisions of this article.

(42) "Repellent" means a substance, not a fumigant, under whatever name known, which may be toxic to insects and related pests, but is generally employed because of its capacity for preventing the entrance or attack of pests.

(43) "Restricted use pesticide" means any pesticide classified for restricted use by the administrator, United States environmental protection agency or any pesticide declared to be state restricted by the commissioner.

(44) "Rodenticide" means any substance or mixture of
substances intended for preventing, destroying, repell-
ing or mitigating any undesirable rodents or any other
vertebrate animals or others which the commissioner
may declare to be a pest.

(45) "Serious violation" means a violation of this
article or rule promulgated by the commissioner where
there is a substantial probability that death or serious
physical harm to persons, serious harm to property or
serious harm to the environment could have resulted
from the violation unless the person or licensee did not
or could not with the exercise of reasonable diligence
know of the violation.

(46) "State restricted use pesticide" means any
pesticide that the commissioner determines subsequent
to a hearing, when used as directed or in accordance
with a widespread and commonly recognized practice,
requires additional restrictions for that use to prevent
unreasonable adverse effects on the environment
including man, land, beneficial insects, animals, crops
and wildlife, other than pests.

(47) "Unreasonable adverse effects on the environ-
ment" means any unreasonable risk to man or the
environment, taking into account the economic, social
and environmental costs and benefits of the use of any
pesticide.

(48) "Weed" means any plant which grows where not
wanted.

(49) "Wildlife" means all living things that are neither
human, domesticated nor, as defined in this article,
pests, including, but not limited to, mammals, birds and
aquatic life.

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

The commissioner of agriculture has the power and
duty to carry out the provisions of this article and is
authorized to:

(1) Delegate to employees of the department of
agriculture the authority vested in the commissioner by
virtue of the provisions of this article.
(2) Cooperate, receive grants in aid and enter into agreements with any other agency of the state, the United States department of agriculture, United States environmental protection agency or any other federal agency or any other state or agency thereof for the purpose of carrying out the provisions of this article.

(3) Contract for research projects.

(4) Require that pesticides used in this state are adequately tested and are safe for use under local conditions.

(5) Require that individuals who sell, store, dispose or apply pesticides are adequately trained and observe appropriate safety practices.

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

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

(B) Registration of pesticides for manufacture, distribution, sale, storage or use in this state;

(C) Requiring reporting and recordkeeping related to licensing and registration;

(D) Establishing training, testing and standards for certification of commercial application, public applicator, registered technician and private applicator;

(E) Revoking, suspending or denying licenses, registration and certification or certificate or permits;

(F) Creating advisory committees made up of both pesticide industry representatives and consumers as deemed necessary to implement this article;

(G) Establishing a fee structure for licenses, registration and certificate to defray the costs of implementing this article;

(H) Classifying or subclassifying certificate or certificates to be issued under this article. Such classification may include, but not be limited to, agricultural, forest,
ornamental, aquatic, right-of-way, industrial, institutional, structural or health-related pest control;

(I) Restricting or prohibiting the sale or use and disposal of any pesticide, pesticide container or residue which is extremely hazardous;

(J) Coordinating and supporting pesticide monitoring programs;

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

(L) Establishing guidelines and requirements, as deemed necessary, for licensees, certificate holders and permittees for the identification of pests and their methods of inspection of property to determine the presence of pests;

(M) Establishing procedures for reporting spills, accidents or incidents; and

(N) Such other rules necessary or convenient to carry out the purpose of this article.

§19-16A-5. Registration of pesticides; fees; confidentiality of trade secrets.

(a) Every pesticide which is manufactured, distributed, sold or offered for sale, used or offered for use within this state, or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the commissioner, and such registration shall be renewed annually. The commissioner may register and permit the sale and use of any pesticide which has been registered under the provisions of 7 U.S.C. § 136 et seq., as the same is in effect on the effective date of this article: Provided, That such pesticides are subject to registration fees and all other provisions of this article.

(b) Products which have the same formula, and are
manufactured by the same person, the labeling of which contain the same claims and which have designation identifying the products as the same pesticide may be registered as a single pesticide without an additional fee.

(c) Within the discretion of the commissioner or his or her authorized representative, a change in labeling or formulas of a pesticide may be made within the current period of registration, without requiring a new registration of the product. The period of registration shall be for one year, commencing on the first day of January and ending on the thirty-first day of December of each year.

(d) The registrant shall file with the commissioner a statement including:

(1) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) The name of the pesticide;

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use; and

(4) If requested by the commissioner, a full description of the tests made and the results thereof upon which the claims are based and the analytical method or methods employed in determining the percentage of each active ingredient listed on the label to be registered. In the case of renewal of registration, a statement is required only with respect to information which is different from that furnished when the pesticide was registered or last registered.

(e) The registrant shall pay an annual fee as prescribed by rules promulgated hereunder for each brand and grade of pesticide. The fees shall be deposited in the state treasury and to the credit of a special fund to be used only for carrying out the provisions of this article, and shall be expended upon order of the commissioner of agriculture, pursuant to section twenty-three of this article.
(f) The commissioner may require the submission of the complete formula of any pesticide. If it appears to the commissioner that the composition of the item is such as to warrant the proposed claims for it and if the item and its labeling and other material required to be submitted to comply with the requirements of this article, he or she shall register the item.

(g) If it does not appear to the commissioner that the item is such as to warrant the proposed claims for it or if the item and its labeling and other material required to be submitted do not comply with the provisions of this article, he or she shall notify the registrant of the manner in which the item, labeling or other material required to be submitted fails to comply with this article so as to afford the registrant an opportunity to make the necessary corrections.

(h) The commissioner may not make public, information which, in his or her judgment, contains or relates to trade secrets, commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this article, information relating to formulas of products acquired by authorization of this article may be revealed to any federal, state or local agency consultant and may be revealed at a public hearing or in findings of fact issued by the commissioner when it is in the public's best interest.

(i) The commissioner shall provide the necessary forms to register pesticides.

§19-16A-6. Refusal or cancellation of registration.

The commissioner may refuse or cancel the registration of a pesticide if he or she finds, after a hearing, that use of the pesticide has demonstrated unreasonable adverse effects on the environment; or, a false or misleading statement about the pesticide has been made or implied by the registrant or the registrant’s agent, in writing, verbally or through any form of advertising or literature or the registrant has not complied or the pesticide does not comply with the requirements of this article or any rule adopted pursuant to this article.

(a) No person may engage in the application of pesticides for hire at any time without a pesticide application business license issued by the commissioner. The commissioner shall require an annual fee for each pesticide application business license issued as prescribed by rules promulgated hereunder.

(b) Application for a pesticide application business license shall be made in writing to the commissioner on forms approved or supplied by the commissioner. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications the applicant is applying for and shall include the following:

(1) The full name of the person applying for the license;

(2) If different from subdivision (1) of this section, the full name of the individual qualifying under subsection (c) of this section;

(3) If the applicant is a person other than an individual, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation or group;

(4) The principal business address of the applicant in the state and elsewhere;

(5) The address of each branch office or suboffice from which the business of applying pesticides is carried on. Each suboffice shall be licensed;

(6) The name and address of each certified commercial applicator applying pesticides or supervising the application of pesticides for the pesticide application business;

(7) State tax number; and

(8) Any other necessary information prescribed by the commissioner.

(c) The commissioner may not issue a pesticide application business license until the owner, manager,
partner or corporate officer is qualified by passing an examination to demonstrate to the commissioner his or her knowledge of the state and federal pesticide laws, safe use and storage of pesticides. The pesticide application business shall be limited to the classification or classifications for which the business maintains certified commercial applicators in their employ.

(d) If the commissioner finds the applicant qualified to apply pesticides in the classifications the applicant has applied for, and if the applicant files the financial security required by this article, and if the applicant applying for a license to engage in aerial application of pesticides has met all the requirements of the federal aviation agency, the aeronautics commission of this state, and any other applicable federal or state laws or regulations to operate the equipment described in the application, the commissioner shall issue a pesticide application business license. The license so issued expires at the end of the calendar year of issue, unless it has been revoked or suspended prior thereto by the commissioner for cause. When the financial security required under this article is dated to expire at an earlier date, the license shall be dated to expire upon expiration date of said financial security. The commissioner may limit the license of the applicant to certain classifications of pest control work, or to certain areas or to certain types of equipment or to certain specific pesticides, if the applicant is only so qualified. If a license is not issued as applied for, the commissioner shall inform the applicant in writing of the reasons therefor.

(e) All persons applying pesticides as a pesticide business, whether or not they are applying restricted use pesticides, must be a certified applicator in the appropriate category or subcategory, or must be a registered technician under the direct supervision of a certified commercial applicator.

(f) All funds collected pursuant to this section shall be deposited in the general revenue fund of the state, pursuant to section twenty-three of this article.

(a) The commissioner may not issue a pesticide application business license until the business has furnished evidence of financial security with the commissioner consisting of either:

(1) A surety bond to the benefit of the state of West Virginia; or

(2) A liability insurance policy from a person authorized to do business within this state or a certificate thereof protecting persons who may suffer legal damages as a result of the operation of licensee's business operation.

(b)(1) The commissioner, taking into consideration the different classifications or categories of pesticide application business licenses, shall establish the amount and kind of financial security for property damage and public liability and including loss or damage arising out of the actual use of any pesticide for each classification of license required. The financial security shall be maintained at not less than that sum at all times during the license period. The commissioner shall be notified forty-five days prior to any reduction at the request of the applicant or cancellation of such surety bond or liability insurance by the surety or insurer. The total and aggregate liability of the surety or insurer for all claims is limited to the face of the bond or liability insurance policy. The commissioner may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in the amount not exceeding that which the commissioner shall establish separately for aerial applicators and for other commercial applicators for the total amount of financial security required herein. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, the deductible clause may not be accepted by the commissioner unless the applicant furnishes the commissioner with a surety bond or liability insurance which satisfies the amount of the deductible as to all claims that may arise in his or her application of pesticides.
(2) If the surety furnished becomes unsatisfactory, the applicant shall, upon notice, immediately establish new evidence of financial security and if he or she fails to do so, it is unlawful thereafter for such person to engage in said business of applying pesticides until the financial security is brought into compliance with the requirements as established by the commissioner and the person's license is reinstated.

(c) Nothing in this article may be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though the use conforms to the rules of the commissioner.


As a condition of obtaining or renewing a license, each pesticide business shall maintain such records as required by the rules promulgated hereunder. The commissioner may require a licensed pesticide business to submit records to his or her office and failure to submit requested records is grounds for revocation of a license.

§19-16A-10. Restricted use pesticides.

No person may use any pesticide classified for restricted use unless that person has first complied with the certification requirements of the rules promulgated pursuant to this article, unless such person is acting under the direct supervision of a certified applicator.

§19-16A-11. Application of this article to government entities; liability.

All state agencies, municipal corporations or any other governmental agency are subject to the provisions of this article and rules adopted thereunder concerning the registration or application of pesticides.

These agencies are exempt from any fees prescribed by this article.

The governmental agencies and municipal corpora-
tions are subject to legal recourse by any person damaged by the application of any pesticide, and the action may be brought in the county where the damage or some part thereof occurred.

§19-16A-12. Private and commercial applicator's license and certificate; registered technician certificate.

(a) Application for a private or commercial applicator's license shall be made in writing to the commissioner on forms approved or supplied by the commissioner. Each application shall contain:

(1) The full name of the person applying for the license;

(2) The principal business address of the applicant;

(3) A listing of agricultural commodities produced or to be produced by the applicant applying for a private applicator's license;

(4) Any other necessary information prescribed by the commissioner; and

(5) Payment of required fees.

(b) The commissioner may renew any applicant's license under each classification for which such applicant is licensed. However, the applicant may, at no greater than three-year intervals, be required to present evidence or documentation indicating he or she has attended a workshop or training session approved by the commissioner.

(c) No private applicator may use any restricted use pesticide which is restricted to use by certified applicators without having first complied with the certification requirements determined by the commissioner as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use.

(d) As a minimum requirement for certification, a private or commercial applicator must show that he or she possesses a practical knowledge of the pest problems
and pest control practices associated with his or her agricultural operations, proper storage, use, handling and disposal of the pesticides and containers and his or her related legal responsibility. This practical knowledge includes ability to:

(1) Recognize common pests to be controlled and damage caused by them;

(2) Read and understand the label and labeling information including the common name of pesticides he or she uses; the crop, animal or site to which they will be applied; pests to be controlled; timing and methods of application; safety precautions; any preharvest or reentry restrictions; and any specified disposal procedures;

(3) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(4) Recognize local environmental situations that must be considered during application to avoid contamination; and

(5) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(e) If the commissioner does not certify the private or commercial application under this section, he or she shall inform the applicant in writing of the reasons therefor.

(f) Any written examinations required of private or commercial applicators may not be more stringent than the requirements for such examinations by the United States environmental protection agency.


Any person holding a current valid license, permit or certification may renew such license, permit or certification for the next year without taking another exam-
information, unless the license, permit or certification is not
renewed by the first day of April of any year in which
such license, permittee or certificate holder shall
be required to take another examination: Provided, That
no person holding an expired license, permit or certifi-
cation may engage in any activity for which such
license, permit or certification is required until such
license, permit or certification has been renewed. Any
person renewing after the fifteenth day of January of
each year shall pay a penalty of twenty-five percent of
the established license, permit or certificate fee. A
penalty of fifty percent of the established fee shall be
levied after the first day of February of each year.
Persons delinquent after the first day of February shall
be so notified.


(a) Veterinarian exemption.—The provisions of
section seven of this article relating to licenses and
requirements for their issuance do not apply to a doctor
of veterinary medicine applying pesticides to animals
during the normal course of his or her veterinary
practice: Provided, That he or she is not regularly
engaged in the business of applying pesticides for hire
amounting to a principal or regular occupation and does
not publicly hold himself or herself out as a pesticide
applicator.

(b) Farmer exemption.—The provisions of section
seven of this article relating to licenses and require-
ments for their issuance do not apply to any farmer
applying pesticides for himself or herself or with ground
equipment or manually for his or her farmer neighbors:
Provided, That he or she:

(1) Operated farm property and operates and main-
tains pesticide application equipment primarily for his
or her own use;

(2) Is not regularly engaged in the business of
applying pesticides for hire amounting to a principal or
regular occupation and that he or she does not publicly
hold himself or herself out as a pesticide applicator; and
(3) Operates his or her pesticide application equipment only in the vicinity of his or her own property and
for the accommodation of his or her neighbors.

c) Experimental research exemption.—The provisions
of section seven of this article relating to licenses and
requirements for their issuance do not apply to research
personnel applying pesticides only to bona fide exper-
imental plots.

§19-16A-15. Reexamination or special examinations.

Any applicator, whose certificate has been suspended,
revoked or modified or if significant technological
developments have occurred requiring additional
knowledge related to the classification or subclassifica-
tion for which the applicator has applied, or when
required by additional standards established by the
United States environmental protection agency, or when
required by rules of the commissioner, is required to be
reexamined or to take special examinations and furnish
satisfactory evidence of completion of educational
courses, programs or seminars approved by rules
relating to applicator’s certification.

§19-16A-16. Employee training program.

A licensee shall register with the commissioner any
employee who performs pest control within thirty days
after employment. The employee must have successfully
completed training approved by the department. An
employee who has not successfully completed training
may only apply pesticides if a certified applicator is
physically present at the time and place the pesticide is
applied. The commissioner shall adopt rules that
establish the criteria for approved training programs
for such registered technicians.

§19-16A-17. Reciprocal agreement.

The commissioner may waive all or part of any license
examination requirement provided for in this article on
a reciprocal basis with any other state which has
standards at least equal to those of West Virginia and
with federal agencies whose employees are certified
under a government agency plan approved by the
administrator of the federal environmental protection agency and may issue a license to the applicant:

Provided, That all other requirements of this article are complied with by the applicant.

§19-16A-18. Denial, suspension or revocation of license, permit or certification; civil penalty.

The commissioner shall notify any licensee of violations of this article by the licensee, and after inquiry, including opportunity for a hearing, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under this article, or he or she may impose a civil penalty as provided hereafter by this article, if he or she finds that the applicant or the holder of a license, permit or certification has violated any provision of the act or any rule promulgated hereunder.

§19-16A-19. Pesticide accidents; incidents or loss.

(a) Any person claiming damages for a pesticide application shall file with the commissioner, on a form provided by the commissioner, a written statement claiming that he or she has been damaged. This report must be filed within sixty days after the date that damages occurred. If a growing crop is alleged to have been damaged, the report must be filed prior to the time that twenty-five percent of the crop has been harvested. The statement shall contain, but not be limited to, the name of the person allegedly responsible for the application of said pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred and the date on which the alleged damage occurred. The commissioner shall, upon receipt of the statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed and furnish copies of statements as requested. The commissioner shall inspect damages whenever possible and when he or she determines that the complaint has sufficient merit he or she shall make the information available to the person claiming damage and to the person who is alleged to have caused the damage.
(b) The filing of the report or the failure to file a report need not be alleged in any complaint which is filed in a court of law, and the failure to file the report may not be considered a bar to the maintenance of any criminal or civil action.

(c) The failure to file a report is not a violation of the provisions of this article. However, if the person failing to file a report is the only one injured from such use or application of a pesticide by others, the commissioner may, when in the public interest, refuse to hold a hearing for the denial, suspension or revocation of a license or permit issued under this article until a report is filed.

(d) Where damage is alleged to have occurred, the claimant shall permit the commissioner, the licensee and his or her representative, such as bondsman or insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that the damage may be examined. Failure of the claimant to permit the observation and examination of the damaged lands automatically bars the claim against the licensee.

§19-16A-20. Legal recourse of aggrieved persons.

Any person aggrieved by any action of the commissioner may obtain a review thereof by filing in a court of competent jurisdiction, within thirty days of notice of the action, a written petition praying that the action of the commissioner be set aside. A copy of such petition shall forthwith be delivered to the commissioner and within thirty days thereafter the commissioner shall certify and file in the court a transcript of any record pertaining thereto, including a transcript of evidence received, whereupon the court has jurisdiction to affirm, set aside or modify the action of the commissioner, except that the findings of the commissioner as to the facts, if supported by substantial evidence, are conclusive.


It is unlawful for any person to manufacture, distribute, sell or offer for sale, use or offer to use:
(1) **Product registration.**—(A) Any pesticide which is not registered pursuant to the provisions of this article, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representation made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration, in the discretion of the commissioner, a change in the labeling or formula of a pesticide may be made, within a registration period, without requiring registration of the product, however, changes are not permissible if they lower the efficiency of the product.

(B) Any pesticide sold, offered for sale or offered for use which is not in the registrant's or the manufacturer's unbroken container and to which there is not affixed a label, visible to the public, bearing the following information:

(i) The name and address of the manufacturer, registrant or person for whom manufactured;

(ii) The name, brand or trademark under which the pesticide is sold; and

(iii) The net weight or measure of the content, subject to such reasonable variation as the commissioner may permit.

(C) Any pesticide which contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to any other matter required by this article:

(i) A skull and crossbones;

(ii) The word "poison" prominently in red, on a background of distinctly contrasting color; and

(iii) A statement of an antidote for the pesticide.

(D) The pesticides commonly known as lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, sodium fluoride, sodium fluosilicate and barium fluosilicate unless they have been distinctly colored or discolored as provided by rules
issued in accordance with this article, or any other white
powder pesticide which the commissioner, after inves-
tigation of and after public hearing on the necessity for
such action for the protection of the public health and
the feasibility of coloration or discoloration, by rules,
requires to be distinctly colored or discolored, unless it
has been so colored or discolored. The commissioner may
exempt any pesticide to the extent that it is intended for
a particular use or uses from the coloring or discoloring
required or authorized by this subsection if he or she
determines that such coloring or discoloring for such use
or uses is not necessary for the protection of the public
health.

(E) Any pesticide which is adulterated or mis-
branded, or any device which is misbranded.

(F) Any pesticide that is the subject of a stop-sale, use
or removal order provided for hereinafter in this article
until such time as the provisions of that section hereafter
have been met.

(2) Business/applicator violations.—In addition to
imposing civil penalties or referring certain violations
for criminal prosecution the commissioner may, after
providing an opportunity for a hearing, deny, suspend,
modify or revoke a license issued under this article, if
he or she finds that the applicant, or licensee or his or
her employee has committed any of the following acts,
each of which is declared to be a violation:

(A) Made false or fraudulent claims through any
media, misrepresenting the effect of materials or
methods to be utilized or sold;

(B) Used or caused to be used any pesticide in a
manner inconsistent with its labeling or rules of the
commissioner: Provided, That such deviation may
include provisions set forth in section 2(ee) of the federal
insecticide, fungicide and rodenticide act (7 U.S.C. § 136
et seq.), as the same is in effect on the effective date of
this article, disposed of containers or unused portions of
pesticide inconsistent with label directions or the rules
of the commissioner in the absence of label directions
if those rules further restrict such disposal;
(C) Acted in a manner to exhibit negligence, incompetence or misconduct in acting as a pesticide business;

(D) Made false or fraudulent records, invoices or reports;

(E) Failed or refused to submit records required by the commissioner;

(F) Used fraud or misrepresentation, or presented false information in making application for a license or renewal of a license, or in selling or offering to sell pesticides;

(G) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted rules;

(H) Provided or made available any restricted use pesticide to any person not certified under the provisions of this article or rules issued hereunder;

(I) Made application of any pesticide in a negligent manner;

(J) Neglected or, after notice, refused to comply with the provisions of this article, the rules adopted hereunder or of any lawful order of the commissioner;

(K) Refused or neglected to keep and maintain records or reports required under the provisions of this article or required pursuant to rules adopted under the provisions of this article or refused to furnish or permit access for copying by the commissioner any such records or reports;

(L) Used or caused to be used any pesticide classified for restricted use on any property unless by or under the direct supervision of a certified applicator;

(M) Made false or misleading statements during or after an inspection concerning any infestation of pests found on land;

(N) Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification;
(O) Aided, abetted or conspired with any person to violate the provisions of this article, or permitted one's certification or registration to be used by another person;

(P) Impersonated any federal, state, county or city inspector or official;

(Q) Made any statement, declaration or representation through any media implying that any person certified or registered under the provisions of this article is recommended or endorsed by any agency of this state;

(R) Disposed of containers or unused portions of pesticide inconsistent with label directions or the rules of the commissioner in the absence of label directions if those rules further restrict such disposal;

(S) Detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this article or the rules promulgated under the provisions of this article; or

(T) Refuse, upon a request in writing specifying the nature or kind of pesticide or device to which such request relates, to furnish to or permit any person designated by the commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this article.

§19-16A-22. Criminal penalties; civil penalties; negotiated agreement.

(a) Criminal penalties.—Any person violating any provision of this article or rule adopted hereunder is 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 first offense, and for the second offense, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.
(b) Civil penalties.—(1) Any person violating a provision of this article or rule adopted hereunder may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person, the seriousness of the violation, including any irreparable harm to the environment and any hazards to the health and safety of the public and the demonstrated good faith of any person charged in attempting to achieve compliance with this article after written notification of the violation.

(2) The commissioner may assess a penalty of not more than five hundred dollars for each first offense, nonserious violation, and not more than one thousand dollars for a serious violation, or for a repeat or intentional violation.

(3) The civil penalty is payable to the state of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the state of West Virginia upon the property, both real and personal, of such a person after the same has been entered and docketed to record in the county where such property is situated. The clerk of the county, upon receipt of the certified copy of such, shall enter same to record without requiring the payment of costs as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article.

(d) No state court may allow the recovery of damages for administrative action taken if the court finds that there was probable cause for such action.

§19-16A-23. Creation of pesticide control fund in state treasury; disposition of certain fees to general revenue fund.
There is hereby created a special fund in the state treasury to be known as “pesticide control fund” and may be expended on order of the commissioner. All product registration fees, nondedicated fees or civil penalties collected hereunder shall be placed in the pesticide control fund. The proceeds of the pesticide control fund may be used in carrying out the purpose of this article. Dealer, commercial and private applicator license fees and pesticide application business license fees shall be deposited in the general revenue fund of the state.


The commissioner may issue subpoenas to compel the attendance of the witnesses or production of books, documents and records anywhere in the state in any hearing affecting the authority or privilege granted by a license, certification or permit issued under the provisions of this article.

§19-16A-25. Right of commissioner to enter and inspect; enforcement of article.

(a) For the purpose of carrying out the provisions of this article, the commissioner may enter upon any public or private premises, other than a dwelling house and the curtilage thereof, at reasonable times, after reasonable notification to the owner, tenant or agent, in order to:

(1) Have access for the purpose of inspecting any equipment subject to this article and such premises on which such equipment is kept or stored;

(2) Inspect lands actually or reported to be exposed to pesticides;

(3) Inspect storage or disposal areas;

(4) Inspect or investigate complaints of injury to humans or land; or

(5) Sample pesticides being applied or to be applied.

(b) If the commissioner is denied access to any land
where such access was sought for the purpose set forth
in this article, he or she may apply to any court of
competent jurisdiction for a search warrant authorizing
access to such land for said purposes. The court may,
on such application, issue the search warrant for the
purposes requested.

(c) The commissioner, with or without the aid and
advice of the county prosecuting attorney, is charged
with the duty of enforcing the requirements of this
article and any rules issued hereunder. In the event a
county prosecuting attorney refuses to act on behalf of
the commissioner, the attorney general shall so act.

(d) The commissioner may bring an action to enjoin
the violation or threatened violation of any provisions of
this article or any rule made pursuant to this article in
a court of competent jurisdiction of the county in which
such violation occurs or is about to occur.

§19-16A-26. Issuance of stop-sale; use or renewal orders;
judicial review.

The commissioner shall issue and enforce a written or
printed "stop-sale, use or renewal" order directed to the
owner or custodian of any lot of pesticide, requiring him
or her to hold the lot of pesticide at a designated place,
when the commissioner finds the pesticide is being
offered or exposed for sale or use or is being used in
violation of any of the provisions of this article, until the
law has been complied with and the pesticide is released
in writing by the commissioner, or the violation has been
otherwise legally disposed of by written authority. The
owner or custodian of such pesticide has the right to
judicial review of such order in accordance with the
provisions of article five, chapter twenty-nine-a of this
code. The provisions of this section may not be construed
as limiting the right of the commissioner to proceed as
authorized by other provisions of this chapter. The
commissioner shall release the pesticide so withdrawn
when the requirements of the provisions of this chapter
have been complied with and upon payment of all costs
and expenses incurred in connection with the withdra-
wal.
§19-16A-27. Issuing warnings.

1 Nothing in this article requires the commissioner to report, for the institution of proceedings under this article, minor violations of this article whenever the commissioner believes that the public interest will be adequately served by a suitable written notice or warning to the person violating the provisions of this article.

CHAPTER 8
(Com. Sub. for H. B. 2813—By Mr. Speaker, Mr. Chambers)

[Passed March 9, 1990: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, eight and nine, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to air pollution control; eliminating the requirement that state controls be no more stringent than federal controls; allowing the air pollution control commission to establish permit and operating fees to be applied to paying salaries and expenses of the commission; increasing civil penalties and providing criminal penalties for violations of the article; requiring the attorney general to bring actions on behalf of the commission; and authorizing the director of the air pollution control commission to seek injunctive relief for violations.

Be it enacted by the Legislature of West Virginia:

That sections five, eight and nine, article twenty, 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 20. AIR POLLUTION CONTROL.

§16-20-5. Air pollution control commission—Powers and duties; legal services; rules; public hearings.

§16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys.

§16-20-9. Applications for injunctive relief.
§16-20-5. Air pollution control commission—Powers and duties; legal services; rules; public hearings.

The commission is hereby authorized and empowered:

(1) To develop ways and means for the regulation and control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the commission may deem advisable and necessary;

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the commission shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no rule or program of the commission shall be any more stringent than any federal rule or program except to the limited extent that the commission first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof;

(5) To enter orders requiring compliance with the provisions of this article and the rules lawfully promulgated hereunder;

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipal-
(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purpose of this article;

(9) To enter and inspect any property, premise or place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the commission who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection; Provided, That nothing contained in this article shall be construed to allow a search of a private dwelling, including the curtilage thereof, without a proper warrant;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution;

(13) To appoint advisory councils from such areas of the state as it may determine. Each such council so appointed shall consist of not more than five members appointed from the general public, for each area so designated. Such members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise and consult with the commission about all
matters pertaining to the regulation, control and
abatement of air pollution within such area;

(14) To require any and all persons who are directly
or indirectly discharging air pollutants into the air to
file with the commission such information as the
director may require in a form or manner prescribed
by him for such purpose, including, but not limited to,
location, size and height of discharge outlets, processes
employed, fuels used and the nature and time periods
of duration of discharges. Such information shall be
filed with the director, when and in such reasonable
time, and in such manner as the director may prescribe;

(15) To require the owner or operator of any station-
ary source discharging air pollutants to install such
monitoring equipment or devices as the director may
prescribe and to submit periodic reports on the nature
and amount of such discharges to the commission;

(16) To do all things necessary and convenient to
prepare and submit a plan or plans for the implemen-
tation, maintenance and enforcement of the "Federal
Clean Air Act," as amended: Provided, That in prepar-
ing and submitting each such plan the commission shall
establish in such plan that such standard shall be first
achieved, maintained and enforced by limiting and
controlling emissions of pollutants from commercial and
industrial sources and locations and shall only provide
in such plans for limiting and controlling emissions of
pollutants from private dwellings and the curtilage
thereof as a last resort: Provided, however, That nothing
herein contained shall be construed to affect plans for
achievement, maintenance and enforcement of motor
vehicle emission standards and of standards for fuels
used in dwellings;

(17) Whenever the commission achieves informally,
by letter, or otherwise, an agreement with any person
that said person will cease and desist in any act
resulting in the discharge of pollutants or do any act to
reduce or eliminate such discharge, such agreement
shall be embodied in a consent order and entered as, and
shall have the same effect as, an order entered after a
hearing as provided in section six of this article; and
(18) To establish by rule, permit and operating fees and penalties for nonpayment thereof. Such fees shall be deposited in a special fund in the state treasury designated "Air Pollution Control Commission Fund," to be appropriated as provided by law for the purpose of paying salaries and expenses of the commission. Any balance remaining in the fund at the end of any fiscal year shall not revert to the treasury but shall remain in the fund and may be appropriated and used as provided above in the ensuing fiscal years.

The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the commission without additional compensation such legal services as the commission may require of them to enforce the provisions of this article.

No rule of the commission pertaining to the control, reduction or abatement of air pollution shall become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be in at least one county in each affected air quality control region defined by the commission. A copy of any proposed rule of the commission shall be filed in the office of the secretary of state at least sixty days prior to the scheduled date of any such hearing. Full opportunity to be heard shall be accorded to all persons in attendance and any person, whether or not in attendance at such hearing, may submit in writing his views with respect to any such rule to the commission within thirty days after such hearing. After such thirty-day period, no views or comments shall be received in writing or otherwise, unless formally solicited by the commission. The proceedings at the hearing before the commission shall be recorded by mechanical means or otherwise as may be prescribed by the commission. Such record of proceedings need not be transcribed unless requested by
an interested party in which event the prevailing rates for such transcripts will be required from such interested party.

§16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys.

(a) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article shall be subject to a civil penalty not to exceed ten thousand dollars for each day of such violation, which penalty shall be recovered in a civil action brought by the commission in the name of the state of West Virginia in the circuit court of any county wherein such person resides or is engaged in the activity complained of or in the circuit court of Kanawha County. The amount of the penalty shall be fixed by the court without a jury: Provided, That any such person shall not be subject to such civil penalties unless such person shall have first failed to correct such violation after being given written notice thereof by the director and within such time as is specified in the notice of violation issued by the director, such time period to begin upon receipt of said notice. The amount of any such penalty collected by the commission shall be deposited in the general revenue of the state treasury, according to law.

(b) (1) Any person who knowingly misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated by the commission thereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars or imprisoned in the county jail not more than six months or both fined and imprisoned.

(2) Any person who knowingly violates any provision of this article, any permit or any rule or order issued pursuant to this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars or imprisoned in the county jail not more than one year or both fined and imprisoned.
(c) Upon a request in writing from the commission, it shall be the duty of the attorney general and the prosecuting attorney of the county in which any such action for penalties accruing under this section or section nine of this article may be brought to institute and prosecute all such actions on behalf of the commission.

(d) For the purpose of this section, violations on separate days shall be considered separate offenses.

§16-20-9. Applications for injunctive relief.

The director may seek an injunction against any person in violation of any provision of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief brought under this section or for civil penalty brought under section eight of this article may be filed and relief granted notwithstanding the fact that all administrative remedies provided in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

In any action brought pursuant to the provisions of section eight or of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney’s fees.

CHAPTER 9

(Com. Sub. for S. B. 337—By Senators Burdette, Mr. President, and Harman, By Request of the Executive)

[Passed February 27, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article fifteen, chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to amend chapter sixty of said code by adding thereto a new article, designated article three-a; and to amend and reenact section eleven, article seven of said chapter sixty, all relating to taxation and state control of alcoholic liquor; relating to exceptions to consumers sales tax exemptions for private clubs purchasing alcoholic liquor; declaring that the retail sale of liquor should be made through private retail licensees licensed by the state; providing a short title; providing legislative findings and declarations and a legislative purpose; specifying that the sale of liquor by retail licensees shall be lawful; relating to the discontinuing of retail liquor sales by the state; defining terms; creating the retail liquor licensing board; relating to members, qualifications, terms, meetings, officers, compensation, vacancies, quorum and costs of operation; enumerating powers and duties of board; relating to general powers and duties of board and alcohol beverage control commissioner; authorizing market zones and designated areas within such market zones and Class A and Class B retail licenses with respect thereto; relating to the number of Class A and Class B retail licenses and retail outlets in each market zone; establishing application requirements for retail licenses and identifying retail licensee qualifications and disqualifications; granting broad investigative powers; prohibiting judicial review of a decision denying an application after hearing; establishing notice and bidding procedures and bonding requirements; relating to payment of bid price; providing a preference for resident bidders; providing for annual retail license fees and annual renewal of retail licenses; providing that each retail license shall expire on the thirtieth day of June in the year two thousand, prior to which time new retail licenses shall be issued by following the bidding and other procedures specified; providing for annual reports to the joint committee on government and finance; requiring approval for the sale, assignment or transfer of retail licenses; relating to surrender of retail licenses; providing certain restrictions on the location of retail outlets and days and hours when liquor may be sold by retail licensees;
relating to wholesale prices of liquor; relating to maximum wholesale markup percentage for three years; requiring all liquor, other than wine and fortified wine, sold by retail licensees to be purchased from alcohol beverage control commissioner; requiring all liquor, other than wine and fortified wine, sold by private clubs to be purchased from retail licensees; relating to the transportation and storage of liquor; limiting amount of liquor which may be sold to any person at one time; relating to sales of nonintoxicating beer; imposing tax on sales of liquor by retail licensees; requiring posting of informational sign; relating to records and inspection thereof; prohibiting certain acts by persons other than retail licensees; prohibiting certain acts by persons and retail licensees; authorizing the imposition and collection of civil penalties; relating to the suspension or revocation of a retail license; relating to notice, hearing and appeal procedures; specifying that the state administrative procedures act shall be applicable; relating to the disposition of inventory in the event of the revocation or surrender of a retail license; providing that state agencies shall assist terminated employees; providing criminal offenses and penalties; providing rules of construction and a severability clause; relating to the sales tax on sales of liquor to retail licensees; and relating to the drunk driving prevention fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter
11. Taxation.
60. State Control of Alcoholic Liquors.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.
§11-15-9a. Exemptions; exceptions for sales of liquors and wines to private clubs.

The exemptions provided in this article for sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to the tax under this article and, for sales of tangible personal property for the purpose of resale in the form of tangible personal property, shall not apply to persons or organizations licensed under authority of article seven, chapter sixty of this code, for the purchase of liquor or wines for resale either from the alcohol beverage control commissioner or from retail liquor licensees licensed under authority of article three-a, chapter sixty of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article
3A. Sales by Retail Liquor Licensees.
7. Licenses to Private Clubs.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-1. Short title.
§60-3A-2. Legislative findings and declarations; legislative purpose.
§60-3A-3. Sale of liquor by retail licensees permitted; cessation of retail sale of liquor by state.
§60-3A-4. Definitions.
§60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions.
§60-3A-6. General powers and duties of board and commissioner.
§60-3A-7. Market zones; Class A and Class B retail licenses.
§60-3A-8. Retail license application requirements; retail licensee qualifications.
§60-3A-9. Investigation of applicants for retail license; notification to applicants approving or denying application; general provisions relating to licensing.
§60-3A-10a. Preference for resident bidders.
§60-3A-12. Annual retail license fee; expiration and renewal of retail licenses.
§60-3A-14. Sale, assignment or transfer of retail license.
§60-3A-16. Restriction on location of retail outlets.
§60-3A-17. Wholesale prices set by commissioner; continuation of price increases on liquor; retail licensees to purchase liquor from state; transportation and storage; method of payment.
§60-3A-18. Days and hours retail licensees may sell liquor.
§60-3A-19. Limitation on amount to be sold.
§60-3A-20. Nonapplication of article to retail sales of nonintoxicating beer.
§60-3A-21. Tax on purchases of liquor.
§60-3A-23. Records required of retail licensees; inspection of records.
§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.
§60-3A-27. Suspension or revocation of retail license.
§60-3A-29. Disposition of inventory upon revocation or surrender of retail license.
§60-3A-30. Employees.

§60-3A-1. Short title.

1 This article shall be known and may be cited as the “State Retail Liquor License Act”.

§60-3A-2. Legislative findings and declarations; legislative purpose.

1 (a) The Legislature hereby finds and declares that the sale of liquor at retail should no longer be by the state, but rather by retail licensees; that there is a need for the state to control the wholesale sales of liquor; that the health and welfare of the citizens of this state will be adequately protected by the licensing and control of such retail licensees; that the sale of liquor through retail licensees will satisfy reasonable consumer concerns of availability and price; and that the operation and efficiency of state government will be improved by removing the state from the retail sale of liquor and permitting sales of liquor by retail licensees under licenses issued by the state together with strict enforcement of laws and rules relating to the sale of liquor.

15 (b) It is the purpose of the Legislature in providing for the retail sale of liquor to:

17 (1) Continue revenue to the state from the wholesale sale of liquor, by requiring all retail licensees to
purchase all liquor (other than wine) from the commis-
ioner and by further requiring all private clubs
licensed under the provisions of article seven of this
chapter to purchase all liquor (other than wine) from
retail licensees;

(2) Provide a system of controls, through limitations
on the numbers of retail outlets and application of the
police power of the state, to discourage the intemperate
use of liquor;

(3) Preserve and continue the tax base of counties and
municipalities derived from the retail sale of liquor; and

(4) Obtain for the state financial gain from the
issuance of retail licenses.

§60-3A-3. Sale of liquor by retail licensees permitted;
cessation of retail sale of liquor by state.

(a) Notwithstanding any provision of this code to the
contrary, the sale of liquor by retail licensees in
accordance with the provisions of this article shall be
lawful.

(b) Upon the opening of a retail outlet in any market
zone, the state shall, as soon as practicable, discontinue
operating any and all state liquor stores and agency
stores within such market zone so long as a retail outlet
is in operation in such market zone.

§60-3A-4. Definitions.

For the purpose of this article:

“Applicant” means any person who bids for a retail
license, or who seeks the commissioner’s approval to
purchase or otherwise acquire a retail license from a
retail licensee, in accordance with the provisions of this
article;

“Application” means the form prescribed by the
commissioner which must be filed with the commis-
sioner by any person bidding for a retail license;

“Board” means the retail liquor licensing board
created by this article;
“Class A retail license” means a retail license permitting the retail sale of liquor at more than one retail outlet;

“Class B retail license” means a retail license permitting the sale of liquor at only one retail outlet;

“Code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended;

“Designated areas” means one or more geographic areas within a market zone designated as such by the board;

“Executive officer” means the president of an applicant or retail licensee, any vice president of an applicant or retail licensee in charge of a principal business unit or division, or any other officer of an applicant or retail licensee who performs a policy-making function;

“Liquor” means alcoholic liquor as defined in section five, article one of this chapter, and shall also include both wine and fortified wines as those terms are defined in section two, article eight of this chapter;

“Market zone” means a geographic area designated as such by the board for the purpose of issuing retail licenses;

“Retail license” means a license issued under the provisions of this article permitting the sale of liquor at retail;

“Retail licensee” means the holder of a retail license;

“Retail outlet” means a specific location where liquor may be lawfully sold by a retail licensee under the provisions of this article.

§60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions.

(a) There is hereby created the state retail liquor licensing board which shall be composed of five members, three of whom shall be appointed by the governor by and with the advice and consent of the
Senate, one of whom shall be the secretary of tax and revenue, and one of whom shall be the commissioner. The secretary of tax and revenue and the commissioner shall serve as the chairman and secretary, respectively, of the board. No more than two of the three members appointed by the governor shall be of the same political party. No member of the board may hold a retail license or have any financial interest, directly or indirectly, in any retail licensee.

(b) The provisions of this subsection apply to the three members appointed by the governor. They shall be appointed for overlapping terms of three years each and until their respective successors have been appointed and have qualified, except for the original appointments. For the purpose of original appointments, one member shall be appointed for a term of three years and until his or her successor has been appointed and has qualified, one member shall be appointed for a term of two years and until his or her successor has been appointed and has qualified, and one member shall be appointed for a term of one year and until his or her successor has been appointed and has qualified.

Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by Section 5, Article IV of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall receive compensation of one hundred dollars per day for each day actually engaged in the performance of their duties as board members, and in addition shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties.

(c) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.
(d) Staff, office facilities and costs of operation of the board shall be provided by the commissioner.

§60-3A-6. General powers and duties of board and commissioner.

(a) The board shall create, based on economic and demographic factors, market zones within the state for the issuance of Class A and Class B retail licenses, and, if deemed necessary or desirable by the board, to create one or more designated areas within such market zones for the issuance of Class B retail licenses.

(b) The commissioner shall:

(1) Prescribe application forms for persons desiring to acquire retail licenses and adopt an orderly procedure and timetable for investigating, processing and approving applications;

(2) Develop a form of retail license to be issued to each retail licensee under the provisions of this article;

(3) Disseminate to the public information relating to the issuance of retail licenses;

(4) Promulgate standards for advertising the sale, availability, price and selection of liquor;

(5) Enforce the provisions of this article;

(6) Impose civil penalties upon retail licensees;

(7) Enter the retail outlet of any retail licensee at reasonable times for the purpose of inspecting the same, and determining the compliance of such retail licensee with the provisions of this article and any rules promulgated by the board or the commissioner pursuant to the provisions of this article; and

(8) Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of section twenty-six or section twenty-eight of this article, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in section one, article five, chapter twenty-nine-a of this code with like effect as if such section was set forth in extenso herein.
(c) The board and the commissioner shall each:

(1) Engage accounting, legal and other necessary professional consultants to assist them in carrying out their respective duties under this article; and

(2) Adopt, amend, or repeal such procedural, interpretive and legislative rules, consistent with the policy and objectives of this article, as they may deem necessary or desirable for the public interest in carrying out the provisions of this article. Such rules shall be adopted, amended and repealed in accordance with the provisions of chapter twenty-nine-a of this code.

§60-3A-7. Market zones; Class A and Class B retail licenses.

(a) The board shall determine the number of and establish market zones for the retail sale of liquor within this state. For each market zone so established, the commissioner shall be authorized to issue one Class A retail license and one or more Class B retail licenses. Each Class A retail license shall permit the holder thereof to operate such number of retail outlets as the board shall have authorized for that market zone. The number of Class B retail licenses to be issued by the commissioner within each market zone shall not exceed fifty percent of the number of retail outlets authorized for the Class A retail license for such market zone: Provided, That in a market zone where the number of retail outlets authorized under the Class A retail license is an odd number, the number of Class B retail licenses which may be issued in such market zone shall be rounded up to the next highest whole number following that number which is equal to fifty percent of the number of retail outlets authorized under such Class A retail license.

(b) If the board determines that a market zone is not suited for the issuance of a Class A retail license, then only Class B retail licenses may be authorized for such market zone and the board shall determine the maximum number of Class B retail licenses which may be issued for such market zone.
(c) When authorizing Class B retail licenses for a market zone, the board may create one or more designated areas within such market zone and authorize one Class B retail license for each such designated area. For each such market zone, the commissioner may issue additional Class B retail licenses for retail outlets to be located outside any such designated area, but the number of such additional Class B retail licenses, when added to the total number of Class B retail licenses issued for all designated areas within the market zone, shall not exceed the maximum number of Class B retail licenses permitted under subsection (a) of this section for that market zone.

(d) A person may hold one or more Class A retail licenses and one or more Class B retail licenses, but for the same market zone no person shall hold a Class A retail license and a Class B retail license or more than one Class B retail license.

§60-3A-8. Retail license application requirements; retail licensee qualifications.

(a) Prior to or simultaneously with the submission of a bid for a retail license, each applicant shall file an application with the commissioner, stating under oath the following:

(1) If the applicant is an individual, his or her name and residence address;

(2) If the applicant is a corporation, limited partnership, partnership or association, the name and business address of such applicant; the state of its incorporation or organization; the names and residence addresses of each executive officer and director or general partner of such entity; and the names and residence addresses of any person owning, directly or indirectly, at least twenty percent of the outstanding stock of or partnership interests in such applicant; and

(3) That the applicant has never been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any
state or federal liquor law, and if the applicant is a corporation, limited partnership, partnership or association, that none of its executive officers, directors or general partners, or any person owning, directly or indirectly, at least twenty percent of the outstanding stock of or partnership interests in such applicant, has been so convicted.

(b) An applicant shall provide the commissioner any such additional information as the commissioner may request.

(c) Whenever a change occurs in any information provided to the commissioner, such change shall immediately be reported to the commissioner in the same manner as originally provided.

(d) The commissioner shall disqualify each bid submitted by an applicant under section ten of this article, and no applicant shall be issued or eligible to hold a retail license under this article, if:

(1) The applicant has been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law; or

(2) Any executive officer, director or general partner of the applicant, or any person owning, directly or indirectly, at least twenty percent of the outstanding stock of or partnership interests in the applicant, has been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law.

§60-3A-9. Investigation of applicants for retail license; notification to applicants approving or denying application; general provisions relating to licensing.

(a) Upon receipt of an application for a retail license and such supplemental information as the commissioner may require, the commissioner may conduct such investigation of an applicant as deemed necessary or desirable.
6 (b) Upon the completion of any investigation of an applicant, the commissioner shall inform such applicant in writing whether the application has been approved or denied, and shall post a copy of the decision in the commissioner’s office.

11 (c) When an application is denied, the commissioner shall provide the applicant the reasons for the denial, including specific findings of fact, and the applicant shall be entitled to a hearing before the commissioner if a hearing is requested within five days of the decision. Any such hearing shall be held as specified in section twenty-eight of this article, but the decision after hearing shall, notwithstanding the provisions of section twenty-eight, be final and binding and not subject to judicial review.

21 (d) An applicant shall provide all information required by this article and satisfy all requests for information pertaining to qualification and in the form specified by the commissioner. By filing an application, an applicant shall waive liability for any damages resulting from any disclosure or publication in any manner of any material or information acquired during inquiries, investigations or hearings.


1 (a) The issuance of retail licenses shall be based on sealed competitive bids in accordance with the provisions of this section. Bids for the issuance of retail licenses shall be obtained by public notice published as a Class II-0 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 each market zone within which a retail outlet shall be located. The second publication of such notice must appear more than ninety days next preceding the final day for submitting bids.

12 (b) Each bid shall indicate the market zone for which the retail license is sought, whether the bid is for a Class A retail license or Class B retail license, and, if the board has created one or more designated areas for such market zone, whether the bid is for the Class B retail
license to be issued for any such designated area. No bid shall be altered or withdrawn after the appointed hour for the opening of the bids. Each retail license shall be awarded to the highest bidder. In market zones where two or more Class B retail licenses are authorized (other than for a designated area or areas), such licenses shall be awarded to those persons submitting the highest bids. No bid shall be considered unless the bond required under section eleven of this article is submitted to the commissioner. All bids for a retail license may be rejected by the board if the board determines that the highest bid is inadequate, in which event the commissioner shall begin anew the bidding process for that retail license.

(c) Each person desiring to submit a bid must file the same with the commissioner prior to the specified date and hour for the bid openings. The failure to deliver or the nonreceipt of a bid prior to the appointed date and hour shall constitute sufficient reason for the rejection of a bid. After the award of the retail license, the commissioner shall indicate upon the successful bid that it was the successful bid. Thereafter, a copy of the bid and the bidder’s application shall be maintained as a public record, shall be open to public inspection in the commissioner’s office and shall not be destroyed without the written consent of the legislative auditor.

(d) Prior to the advertisement for bids for a retail license, the commissioner shall determine whether the current lessor for any existing state liquor store or stores within the applicable market zone or designated area will agree to accept the eventual Class B retail licensee as lessee for the remaining term of the lease. Should such lessor agree to accept the eventual Class B retail licensee, such retail licensee shall have the option to assume such lease. In market zones where there are two or more Class B retail licensees, the retail licensee who or which submitted the highest bid shall have the option to assume such lease and, if such retail licensee does not assume such lease, then the retail licensee who or which submitted the next highest bid for a retail
license in such market zone shall have the option to assume such lease.

(e) Prior to the issuance of the retail license to the successful bidder, the bid price and the annual retail license fee, as specified in section twelve of this article, shall be paid to the commissioner by money order, certified check or cashier's check. All retail licenses shall be signed by the commissioner in the name of the state.

(f) If the successful bidder fails to pay to the commissioner the bid price and the annual retail license fee, at the time specified by the commissioner, the bond provided for in section eleven of this article shall be forfeited and such bidder shall not be issued the retail license. The commissioner shall then issue the retail license to the next highest bidder for such retail license or reject all bids and start anew the bidding procedure for such retail license.

§60-3A-10a. Preference for resident bidders.

In determining the highest bidder for purposes of section ten of this article, the board shall afford a five percent preference for West Virginia resident bidders, which preference shall be computed by adding five percent of the bid price to the bid price submitted by each resident bidder. For purposes of this section a bidder shall be deemed to be a West Virginia resident if the bidder (1) has resided in this state for at least four years immediately prior to the date on which the bid is opened; or, if the bidder is a corporation, has had its headquarters or principal place of business in this state for at least four years immediately prior to such date and (2) meets the requirements set forth in section forty-four, article three, chapter five-a of this code relating to a residency of vendors, except for the requirement of having paid business and occupation taxes.


Each applicant submitting a bid under section ten of this article shall furnish to the commissioner a bond at
the time of bidding, which bond shall guarantee the
payment of twenty-five percent of the price bid for the
retail license. The bond required by this section shall be
furnished in cash or negotiable securities or shall be a
surety bond issued by a surety company authorized to
do business with the state or an irrevocable letter of
credit issued by a financial institution acceptable to the
commissioner. If furnished in cash or negotiable
securities, the principal shall be deposited without
restriction in the state treasurer's office and credited to
the commissioner, but any income shall inure to the
benefit of the applicant. The bond shall be returned to
an applicant following the bidding if such applicant is
not the successful bidder for the retail license, and, if
an applicant is the successful bidder, the bond shall be
released after issuance of the retail license.

§60-3A-12. Annual retail license fee; expiration and
renewal of retail licenses.

(a) The annual retail license period shall be from the
first day of July to the thirtieth day of June of the
following year. The annual retail license fee for a Class
A retail license shall be the sum obtained by multiplying
the number of retail outlets operated by the retail
licensee in the market zone to which such Class A retail
license applies by one thousand five hundred dollars.
The annual retail license fee for a Class B retail license
shall be five hundred dollars. The annual retail license
fee for the initial year of issuance shall be prorated
based on the number of days remaining between the
date of issuance and the following thirtieth day of June.

(b) All retail licenses shall expire on the thirtieth day
of June of each year and may be renewed only upon the
submission to the commissioner of the same information
required for the issuance of the license and such
additional information as may be requested by the
commissioner on such forms and by such date as may
be prescribed by the commissioner, together with the
payment to the commissioner of the applicable annual
retail license fee required under this section.

(c) No person may sell liquor at any retail outlet if the
retail license applicable to such outlet has been sus-
24 pended or revoked, or has expired.
25 (d) All retail licenses issued or renewed under the
26 provisions of this article shall expire and be of no
27 further force or effect as of the first day of July, in the
28 year two thousand, prior to which time new retail
29 licenses shall be issued by following the bidding and
30 other procedures set forth herein for the initial issuance
31 of retail licenses.

1 On or before the thirty-first day of December, one
2 thousand nine hundred ninety, and each successive year
3 thereafter, the commissioner shall submit to the joint
4 committee on government and finance an annual report
5 focused upon subjects of interest concerning retail
6 alcohol sales and of the implementation of this article
7 including, but not limited to, the total revenue earned
8 by the issuance of retail licenses, the location of each
9 retail outlet and the names of all applicants for retail
10 franchises.

§60-3A-14. Sale, assignment or transfer of retail license.
1 (a) No person may purchase or otherwise acquire a
2 retail license unless the commissioner has first approved
3 of such person’s qualifications to hold a retail license,
4 which qualifications shall be the same as those required
5 under section eight of this article.
6 (b) No person may sell, assign or otherwise transfer
7 a retail license without the prior written approval of the
8 commissioner. For purposes of this section, the merger
9 of a retail licensee or the sale of more than fifty percent
10 of the outstanding stock of or partnership interests in
11 the retail licensee shall be deemed to be a sale,
12 assignment or transfer of a retail license under this
13 section.

1 Any retail licensee may surrender a retail license to
2 the commissioner at any time. The commissioner shall
3 then proceed to reissue the retail license by following the
§60-3A-16. Restriction on location of retail outlets.

No retail outlet may be located within the immediate vicinity of a school or church: Provided, That the provisions of this section shall not apply to the location of a retail licensee who, on the date of the passage of this act, holds a license for the retail sale of wine, fortified wine or nonintoxicating beer at such location.

§60-3A-17. Wholesale prices set by commissioner; continuation of price increases on liquor; retail licensees to purchase liquor from state; transportation and storage; method of payment.

(a) The commissioner shall fix wholesale prices for the sale of liquor (other than wine) to retail licensees. The commissioner shall sell liquor (other than wine) to retail licensees according to a uniform pricing schedule: Provided, That the commissioner may also establish discount prices for the sale to retail licensees of liquor in inventory at state liquor stores and agency stores, but such discount prices shall only be available to retail licensees who accept delivery of such liquor at such stores. The commissioner shall obtain if possible, upon request, any liquor requested by a retail licensee.

(b) In establishing wholesale prices, the commissioner shall include all price increases heretofore mandated under article three of this chapter.

(c) On or before the first day of July, one thousand nine hundred ninety, the commissioner shall specify the maximum wholesale markup percentage which may be applied to the prices paid by the commissioner for all liquor (other than wine) in order to determine the prices at which all liquor (other than wine) will be sold to retail licensees during the succeeding three years.

(d) A retail licensee shall purchase all liquor (other than wine) for resale in this state only from the commissioner, and the provisions of sections twelve and thirteen, article six of this chapter, shall not apply to the transportation of such liquor: Provided, That a retail
licensee shall purchase wine from a distributor thereof who is duly licensed under article eight of this chapter. All liquor (other than wine) purchased by retail licensees shall be stored in the state at the retail outlet or outlets operated by the retail licensee.

(e) The sale of liquor by the commissioner to retail licensees shall be by money order, certified check or cashier's check only: Provided, That if a retail licensee posts with the commissioner an irrevocable letter of credit from a financial institution acceptable to the commissioner guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks in an amount up to the amount of the letter of credit.

§60-3A-18. Days and hours retail licensees may sell liquor.

1 Retail licensees may not sell liquor on Sundays, Christmas or election day, or between the hours of ten o'clock p.m. and eight o'clock a.m., except that wine and fortified wines may be sold on such days and at such times as authorized in section thirty-four, article eight of this chapter.

§60-3A-19. Limitation on amount to be sold.

1 Not more than ten gallons of liquor may be sold by a retail licensee to a person at one time without the approval of the commissioner or his or her representative, but a sale in excess of ten gallons may be made to a religious organization purchasing wine for sacramental purposes: Provided, That this section does not apply to purchases by private clubs as defined in article seven of this chapter.

§60-3A-20. Nonapplication of article to retail sales of nonintoxicating beer.

1 This article does not apply to retail sales of nonintoxicating beer and a retail licensee may sell nonintoxicating beer for consumption off the premises of any retail outlet operated by such retail licensee if such retail licensee has obtained the appropriate license to sell the same under article sixteen, chapter eleven of this code.
§60-3A-21. Tax on purchases of liquor.

(a) For the purpose of providing financial assistance to and for the use and benefit of the various counties and municipalities of this state, there is hereby levied tax upon all purchases of liquor from retail licensees. The tax shall be five percent of the purchase price and shall be added to and collected with the purchase price by the retail licensee.

(b) All such tax collected within the corporate limits of a municipality in this state shall be remitted to such municipality; all such tax collected outside of but within one mile of the corporate limits of any municipality shall be remitted to such municipality; and all other tax so collected shall be remitted to the county wherein collected: Provided, That where the corporate limits of more than one municipality be within one mile of the place of collection of such tax, all such tax collected shall be divided equally among each of such municipalities: Provided, however, That such mile is measured by the most direct hard surface road or access way usually and customarily used as ingress and egress to the place of tax collection.

(c) The tax commissioner, by appropriate rule promulgated pursuant to chapter twenty-nine-a of this code, shall provide for the collection of such tax upon all purchases from retail licensees, separation or proration of the same and distribution thereof to the respective counties and municipalities for which the same shall be collected. Such rule shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the state treasurer upon warrants of the auditor payable to the counties and municipalities.


Each retail licensee shall post in an open and prominent place within each retail outlet operated by such person a blood-alcohol chart in the form prescribed by section twenty-four, article six of this chapter.

§60-3A-23. Records required of retail licensees; inspection of records.
The commissioner shall by rule prescribe the records
to be kept by retail licensees relating to the purchase
and sale of liquor. Such records shall be open at all
reasonable times to inspection by the commissioner.


(a) Any person under the age of twenty-one years who,
for the purpose of purchasing liquor from a retail
licensee, misrepresents his or her age, or who for such
purpose presents or offers any written evidence of age
which is false, fraudulent or not actually his or her own,
or who illegally attempts to purchase liquor from a
retail licensee, is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined in an amount not to
exceed fifty dollars or imprisoned in the county jail for
a period not to exceed seventy-two hours, or both fined
and imprisoned, or, in lieu of such fine and imprison-
ment, may, for the first offense, be placed on probation
for a period not exceeding one year.

(b) Any person who knowingly buys for, gives to or
furnishes to anyone under the age of twenty-one to
whom he or she is not related by blood or marriage any
liquor from whatever source, is guilty of a misdemeanor
and shall, upon conviction thereof, be fined in an amount
not to exceed one hundred dollars or imprisoned in the
county jail for a period not to exceed ten days, or both
fined and imprisoned.

(c) No person while on the premises of a retail outlet
may consume liquor or break the seal on any package
or bottle of liquor. Any person who violates the
provisions of this subsection (c) is guilty of a misdemea-
or and shall, upon conviction thereof, be fined in an
amount not to exceed one hundred dollars or imprisoned
in the county jail for a period not to exceed ten days,
or both fined and imprisoned.

§60-3A-25. Certain acts of retail licensees prohibited;
criminal penalties.

(a) It is unlawful for any retail licensee, or agent or
employee thereof, on such retail licensee's premises to:
(1) Sell or offer for sale any liquor other than from the original package or container;

(2) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person under twenty-one years of age;

(3) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person visibly intoxicated;

(4) Sell or offer for sale any liquor on any Sunday or other than during the hours permitted for the sale of liquor by retail licensees as provided under this article;

(5) Permit the consumption by any person of any liquor;

(6) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any liquor;

(7) Permit any person under eighteen years of age to sell, furnish or give liquor to any other person;

(8) Purchase or otherwise obtain liquor in any manner or from any source other than that specifically authorized in this article; or

(9) Permit any person to break the seal on any package or bottle of liquor.

(b) Any person who violates any provision of this article, except section twenty-four of this article, including, but not limited to, any provision of this section, or any rule promulgated by the board or the commissioner, or who makes any false statement concerning any material fact, or who omits any material fact with intent to deceive, in submitting an application for a retail license or for a renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor, and shall, upon conviction thereof, for each offense be fined not less than one hundred or more than five thousand dollars, or imprisoned in the county jail for not less than thirty days nor more than one year, or both
(c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits any retail licensee from employing any person who is at least eighteen years of age to serve in any retail licensee's lawful employment at any retail outlet operated by such retail licensee, or from having such person sell or deliver liquor under the provisions of this article. With the prior approval of the commissioner, a retail licensee may employ persons at any retail outlet operated by such retail licensee who are less than eighteen years of age but at least sixteen years of age, but such persons' duties shall not include the sale or delivery of liquor: Provided, That the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the retail license issued to any such retail licensee.


(a) Any retail licensee who violates any provision of this article or any rule promulgated by the board or commissioner may be assessed a civil penalty by the commissioner, which penalty shall not be more than one thousand dollars for each such violation. Each violation shall constitute a separate offense. In determining the amount of the penalty, the commissioner shall consider the retail licensee's history of previous violations, the appropriateness of such penalty to the size of the business of the retail licensee charged, the gravity of the violation and the demonstrated good faith of the retail licensee charged in attempting to achieve rapid compliance after notification of a violation.

(b) A civil penalty shall be assessed by the commissioner only after the commissioner shall have given at least ten days' notice to the retail licensee. Notice shall be in writing, shall state the reason for the proposed civil penalty and the amount thereof, and shall designate a time and place for a hearing where the retail licensee may show cause why the civil penalty should not be imposed. Notice shall be sent by certified mail to the
address for which the retail license was issued. The retail licensee may, at the time designated for the hearing, produce evidence in his or her behalf and be represented by counsel.

(c) The provisions of subsections (b), (c), (d) and (e) of section twenty-eight of this article are applicable to any such hearing and with respect to judicial review thereafter.

§60-3A-27. Suspension or revocation of retail license.

(a) The commissioner may, upon his or her own motion, or upon the sworn complaint of any person, conduct an investigation to determine if any provision of this article or of any rule promulgated by the board or commissioner under authority of this article has been violated by any retail licensee. The commissioner may suspend or revoke a retail license if the retail licensee or any employee thereof acting in the scope of his or her employment has violated any such provision, and may suspend a retail license without hearing for a period not to exceed twenty days if he or she finds probable cause to believe that the retail licensee or any employee thereof acting in the scope of his or her employment has willfully violated any such provision.

(b) The commissioner may revoke a retail license for any reason which would constitute grounds for the denial of an application filed pursuant to section eight of this article.


(a) Before a retail license issued under the authority of this article may be suspended for a period of more than twenty days, or revoked, the commissioner shall give at least ten days' notice to the retail licensee. Notice shall be in writing, shall state the reason for suspension or revocation, and shall designate a time and place for a hearing where the retail licensee may show cause why the retail license should not be suspended or revoked. Notice shall be sent by certified mail to the address for which the retail license was issued. The retail licensee may, at the time designated for the hearing, produce
Ch. 9 [ ALCOHOLIC LIQUOR

12 evidence in his or her behalf and be represented by
counsel.

14 (b) Such hearing and the administrative procedures
prior to, during and following the same shall be
governed by and in accordance with the provisions of
article five, chapter twenty-nine-a of this code in like
manner as if the provisions of article five were fully set
forth in this section.

20 (c) Any person adversely affected by an order entered
following such hearing shall have the right of judicial
review thereof in accordance with the provisions of
section four, article five, chapter twenty-nine-a of this
code with like effect as if the provisions of said section
four were fully set forth in this section.

26 (d) The judgment of a circuit court reviewing such
order of the commissioner shall be final unless reversed,
vacated or modified on appeal to the supreme court of
appeals in accordance with the provisions of section one,
article six, chapter twenty-nine-a of this code.

31 (e) Legal counsel and services for the commissioner in
all such proceedings in any circuit court and the
supreme court of appeals shall be provided by the
attorney general or his or her assistants and in any
proceedings in any circuit court by the prosecuting
attorney of that county as well, all without additional
compensation.

38 (f) Upon final revocation, the commissioner shall
proceed to reissue the retail license by following the
procedures set forth herein for the initial issuance of a
retail license.

§60-3A-29. Disposition of inventory upon revocation or
surrender of retail license.

1 In the event of the revocation or surrender of any
retail license in accordance with the provisions of this
article, the commissioner shall purchase, and the retail
licensee holding such retail license shall sell to the
commissioner, all of the liquor inventory of such retail
licensee based on the then current cost of such inventory
less any expenses incurred by the commissioner in
connection with the repossession thereof.
§60-3A-30. Employees.
1 The department of health and human resources, the
division of employment security, the public employees
retirement system, the public employees insurance
agency, any state agency or local community action
agency receiving job training partnership act funds, and
any other agency of the state involved with benefits or
services to the unemployed, shall work individually with
all employees whose jobs have been terminated by this
chapter in order to recommend benefits, services,
training, interagency employment transfer, or other
employment. The alcohol beverage control commission
director and directors of all other state agencies shall
use best efforts to employ qualified employees who were
employed at the facility immediately prior to such sale
or transfer: Provided, That notwithstanding any other
provision of the code to the contrary, in filling vacancies
at other facilities or other state agencies the director and
the directors of other agencies shall, for a period of
twenty-four months after such transfer or sale give
preference over all but existing employees to qualified
employees who were permanently employed at the
facility immediately prior to such transfer or sale:
Provided, however, That qualified persons who were
permanently employed at an alcohol beverage control
commission facility immediately prior to such transfer
or sale shall not supersede those employees with recall
rights in other state agencies.

1 (a) Nothing contained in this article shall be
2 construed to modify the provisions of article five of this
3 chapter relating to local option elections, except that the
4 references to sales of liquor by the commissioner shall
5 be deemed to refer to sales of liquor by retail licensees.
6 (b) If any section, subsection, subdivision, provision,
7 clause or phrase of this article or the application thereof
to any person or circumstance is held unconstitutional
or invalid, such unconstitutionality or invalidity shall
not affect other sections, subsections, subdivisions,
provisions, clauses or phrases or applications of the
Ch. 9] ALCOHOLIC LIQUOR 193

article, and to this end each and every section, subsection, provision, clause and phrase of this article is declared to be severable. The Legislature hereby declares that it would have enacted the remaining sections, subsections, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases thereof would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.

(c) The provisions of subsection (b) of this section shall be fully applicable to all future amendments or additions to this article, with like effect as if the provisions of said subsection (b) were set forth in extenso in every such amendment or addition and were reenacted as a part thereof.

(d) In the event of any conflict between any provision of this article and any other provision of this code, any such other provision shall be construed and applied so as to enable the board and commissioner to implement and make effective the provisions of this article.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner or retail licensee; exceptions.

(a) All licensees shall purchase all alcoholic liquors sold by them from the West Virginia alcohol beverage control commissioner at prices established by such commissioner for sales of such alcoholic liquors to the public generally or from any retail licensee licensed under the provisions of article three-a of this chapter, except that such licensees may purchase those wines permitted to be sold at retail pursuant to article eight of this chapter from those distributors licensed pursuant to said article at the same prices such distributors sell such wines to retailers licensed pursuant to said article.

(b) In all reports filed under section sixteen, article
fifteen, chapter eleven of this code, retail licensees
licensed under the provisions of article three-a of this
chapter shall separately identify the amount of sales tax
on sales of liquor to licensees in such manner as the tax
commissioner shall require.

(c) Notwithstanding the provisions of section thirty,
article fifteen, chapter eleven of this code to the
contrary, the amount of such sales taxes collected by the
tax commissioner shall be deposited in a revolving fund
account in the state treasurer’s office, designated the
“drunk driving prevention fund”, and administered by
the commission on drunk driving prevention, subject to
appropriations by the Legislature.

CHAPTER 10

(Com. Sub. for S. B. 35—By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)

[Passed March 14, 1990; in effect from passage. Approved by the Governor.]
TITLE I—GENERAL PROVISIONS.

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

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

“Governor” shall mean the governor of the state of West Virginia.

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

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

The “fiscal year one thousand nine hundred ninety-one” shall mean the period from July first, one thousand nine hundred ninety, through June thirtieth, one thousand nine hundred ninety-one.

“General Revenue Fund” shall mean the general operating fund of the State and includes all moneys received or collected by the State except as provided in section two, article two, chapter twelve of the code or as otherwise provided.

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

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

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

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

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

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

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

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

“Employee benefits” shall mean social security matching, workers’ compensation, unemployment compensation, pension and retirement contribution, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be paid by each spending unit from its “personal services” line item or its “unclassified” line item. Each spending unit is hereby authorized and required to make such payments.

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

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

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

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

"Repairs and alterations" shall mean routine mainte-
nance and repairs to structures and minor improve-
ments to property which do not increase the capital
assets.

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

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

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

Appropriations classified in any of the above catego-
ries shall be expended only for the purposes as defined
above and only for the spending units herein designated:
Provided, That the secretary of each department shall
have the authority to transfer within the department
those funds appropriated to the various agencies of the
department: Provided, however, That no more than
twenty-five percent of the funds appropriated to any one
agency or board may be transferred to other agencies
or boards within the department: Provided further, That
no funds may be transferred from a special revenue
account, dedicated account, capital expenditure account
or any other account or funds specifically exempted by
the Legislature from transfer, except that the use of
appropriations from the state road fund transferred to
the office of the secretary of the department of trans-
portation is not a use other than the purpose for which
such funds were dedicated and is permitted: And
provided further, That if the Legislature by subsequent
enactment consolidates agencies, boards or functions,
the secretary may transfer the funds formerly approp-
riated to such agency, board or function in order to
implement such consideration.

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

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

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

Sec. 5. Maximum expenditures.—No authority or
requirement of law shall be interpreted as requiring or
permitting an expenditure in excess of the appropria-
tions set out in this bill.

TITLE II—APPROPRIATIONS.
§1. Appropriations from general revenue.
§2. Appropriations of federal funds.

DEPARTMENT OF ADMINISTRATION
Board of Risk and Insurance Management—Acct. No. 2250
Commission on Uniform State Laws—Acct. No. 2450
### Ch. 10] Appropriations

Department of Administration—Office of the Secretary—Acct. No. 5310 .................................................. 17
Division of Finance—Acct. No. 2110 .................................................. 15
Division of Finance and Administration—Acct. No. 2100 .................................................. 15
Division of General Services—Acct. No. 2130 .................................................. 16
Division of Purchasing—Acct. No. 2120 .................................................. 16
Education and State Employees Grievance Board—Acct. No. 6015 .................................................. 18
Ethics Commission—Acct. No. 6180 .................................................. 19
Public Employees Insurance Agency—Acct. No. 6150 .................................................. 18
Public Employees Retirement System—Acct. No. 6140 .................................................. 18
Public Legal Services Council—Acct. No. 5900 .................................................. 17

**DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES**

Air Pollution Control Commission—Acct. No. 4760 .................................................. 22
Coal Mine Safety and Technical Review Committee—Acct. No. 4750 .................................................. 21
Department of Commerce, Labor and Environmental Resources—Office of the Secretary—Acct. No. 5321 .................................................. 23
Division of Commerce—Acct. No. 4625 .................................................. 20
Division of Energy—Acct. No. 4775 .................................................. 20
Division of Forestry—Acct. No. 4650 .................................................. 20
Division of Labor—Acct. No. 4500 .................................................. 20
Division of Natural Resources—Acct. No. 5650 .................................................. 23
Geological and Economic Survey—Acct. No. 3200 .................................................. 22
Interstate Commission on Potomac River Basin—Acct. No. 4730 .................................................. 21
Office of Community and Industrial Development—Acct. No. 1210 .................................................. 19
Ohio River Valley Water Sanitation Commission—Acct. No. 4740 .................................................. 21
Solid Waste Disposal Authority—Acct. No. 4020 .................................................. 19
Water Development Authority—Acct. No. 5670 .................................................. 23
Water Resources Board—Acct. No. 5640 .................................................. 23

**DEPARTMENT OF EDUCATION**

State Board of Education—Vocational Division—Acct. No. 2890 .................................................. 24
State Board of Rehabilitation—
  Division of Rehabilitation Services—Acct. No. 4405 .................................................. 26
State Department of Education—Acct. No. 2860 .................................................. 23
State Department of Education—
  Aid for Exceptional Children—Acct. No. 2960 .................................................. 25
State Department of Education—
  School Lunch Program—Acct. No. 2870 .................................................. 24
State Department of Education—
  State Aid to Schools—Acct. No. 2950 .................................................. 25
State FFA-FHA Camp and Conference Center—Acct. No. 3360 .................................................. 25
West Virginia Schools for the Deaf and the Blind—
  Acct. No. 3380 .................................................. 25

**DEPARTMENT OF EDUCATION AND THE ARTS**

Board of Directors of State College System—Acct. No. 2795 .................................................. 26
Board of Trustees of the University System of West Virginia—
  Acct. No. 2795 .................................................. 26
Board of Trustees of the University System of West Virginia—
  Acct. No. 2855 .................................................. 27
Board of Trustees of the University System of West Virginia and Board of Directors of the State College System—Acct. No. 2800 .................................................. 26
Department of Education and the Arts—
  Office of the Secretary—Acct. No. 5332 .................................................. 28
Division of Culture and History—Acct. No. 3510 .................................................. 28
Educational Broadcasting Authority—Acct. No. 2910 .................................................. 27
Library Commission—Acct. No. 3500 .................................................. 28

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

Commission on Aging—Acct. No. 4060 .................................................. 31
§3. Appropriations from other funds.
§4. Appropriations of federal funds.
PAYABLE FROM MEDICAL SCHOOL FUND
DEPARTMENT OF EDUCATION AND THE ARTS
West Virginia University—Schools of Health Sciences—Acct. No. 9280

PAYABLE FROM SPECIAL REVENUE FUND
DEPARTMENT OF ADMINISTRATION
Division of Finance and Administration—
Information System Services Division Fund—Acct. No. 8151
Division of Personnel—Acct. No. 8401

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
Division of Natural Resources—Acct. No. 8300

DEPARTMENT OF EDUCATION
State Board of Rehabilitation—Division of
Rehabilitation Services—West Virginia
Rehabilitation Center—Special Account—Acct. No. 8137

DEPARTMENT OF EDUCATION AND THE ARTS
Higher Education Central Office—State System
Registration Fee—Revenue Bond Construction Fund—Acct. No. 8845
Higher Education Central Office—State System
Registration Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)—Acct. No. 8855
Higher Education Central Office—State System
Tuition Fee—Revenue Bond Construction Fund—
Acct. No. 8860
Higher Education Central Office—State System
Tuition Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)—Acct. No. 8855

DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Board of Barbers and Beauticians—Acct. No. 8220
Division of Health—Hospital Services Revenue Account (Special Fund)
(Capital Improvement Renovation and Operation)—Acct. No. 8500
Division of Health—Vital Statistics—Acct. No. 8210-19
Division of Veterans’ Affairs—Veterans’ Home—
Acct. No. 8260-13

DEPARTMENT OF PUBLIC SAFETY
Division of Public Safety—Drunk Driving Prevention Fund—
Acct. No. 8355
Fire Commission—Fire Marshal Fees—Acct. No. 8017

DEPARTMENT OF TAX AND REVENUE
Office of Alcohol Beverage Control Commissioner—Acct. No. 9270
Racing Commission—Acct. No. 8080
Racing Commission—Administration and Promotion—Acct. No. 8081

DEPARTMENT OF TRANSPORTATION
Division of Motor Vehicles—Driver
Rehabilitation—Acct. No. 8421-11
Division of Motor Vehicles—Driver’s License
Reinstatement Fund—Acct. No. 8421-10

EXECUTIVE
Department of Agriculture—Acct. No. 8180
§5. Appropriations from other funds.

PAYABLE FROM LOTTERY NET PROFITS
Board of Trustees of the University System of West Virginia and Board of Directors of the State College System—Acct. No. 8825 ........................................... 50
Department of Health and Human Resources—Acct. No. 9132 ........................................... 50
Division of Commerce—Acct. No. 8546 ........................................... 50
Division of Health—Acct. No. 8525 ........................................... 50
State Department of Education—Acct. No. 8243 ........................................... 49
Teachers' Retirement Board—Acct. No. 9260 ........................................... 51

PAYABLE FROM SPECIAL REVENUE FUND
DEPARTMENT OF ADMINISTRATION
Division of Finance and Administration—Revolving Fund—Acct. No. 8140 ........................................... 52

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
Division of Banking—Acct. No. 8392-06 ........................................... 56
Division of Banking—Acct. No. 8395 ........................................... 56
Division of Energy—Oil and Gas Operating Permits—Acct. No. 8536-25 ........................................... 58
Division of Energy—Oil and Gas Reclamation Trust—Acct. No. 8536-14 ........................................... 57
Division of Energy—Special Reclamation Fund—Acct. No. 8536-10 ........................................... 57
Division of Forestry—Acct. No. 8477-24 ........................................... 57
Division of Natural Resources—Game, Fish and Aquatic Life Fund—Acct. No. 8324-06 ........................................... 55
Division of Natural Resources—Groundwater Planning—Acct. No. 8311-10 ........................................... 53
Division of Natural Resources—Hazardous Waste Emergency and Response Fund—Acct. No. 8311-26 ........................................... 53
Division of Natural Resources—Leaking Underground Storage Tanks—Acct. No. 8311-34 ........................................... 54
Division of Natural Resources—Nongame Fund—Acct. No. 8324-26 ........................................... 55
Division of Natural Resources—Planning and Development Division—Acct. No. 8329-07 ........................................... 55
Division of Natural Resources—Solid Waste Enforcement Fund—Acct. No. 8311-32 ........................................... 54
Division of Natural Resources—Solid Waste Reclamation and Environmental Response Fund—Acct. No. 8311-31 ........................................... 54
Geological and Economic Survey—Acct. No. 8589 ........................................... 58
Office of Community and Industrial Development—Acct. No. 8046-10 ........................................... 52
Oil and Gas Conservation Commission—Acct. No. 8096-06 ........................................... 53
Solid Waste Management Board—Acct. No. 8460-10 ........................................... 56
Water Resources Board—Acct. No. 8540 ........................................... 58
### DEPARTMENT OF EDUCATION

- State Department of Education—Cedar Lakes Improvement—Act. No. 8245-12 .......................... 59

### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

- Division of Health—Health Facility Licensing—
  Act. No. 8216-19 ........................................ 60
- Division of Health Laboratory Services—
  Act. No. 8215-18 ........................................ 59
- Health Care Cost Review Authority—
  Act. No. 8564 ........................................ 61
- Health Care Cost Review Authority—Planning—
  Act. No. 8216-18 ........................................ 60
- Hospital Finance Authority—Act. No. 8330 ........................................ 60

### DEPARTMENT OF PUBLIC SAFETY

- Division of Public Safety—Barracks Construction—
  Act. No. 8552 ........................................ 62
- Division of Public Safety—Inspection Fees—
  Act. No. 8550 ........................................ 61
- Regional Jail and Prison Authority—Act. No. 8051 ........................................ 61
- State Armory Board—General Armory Fund—
  Act. No. 8445-07 ........................................ 62

### DEPARTMENT OF TAX AND REVENUE

- Agency of Insurance Commissioner—Act. No. 8016 ........................................ 63
- Alcohol Beverage Control Commission—
  Wine License Special Fund—Act. No. 8591-06 ........................................ 63
- Office of Chief Inspector—Act. No. 8090-06 ........................................ 62

### DEPARTMENT OF TRANSPORTATION

- Division of Motor Vehicles—Insurance Certificate Fees—
  Act. No. 8421-09 ........................................ 66
- Division of Motor Vehicles—Motorboat Licenses—
  Act. No. 8421-05 ........................................ 65
- Division of Motor Vehicles—Returned Check Fees—
  Act. No. 8421-08 ........................................ 65

### EXECUTIVE

- Attorney General—Anti-Trust Enforcement—
  Act. No. 8418-10 ........................................ 51
- Auditor’s Office—Land Department Operating Fund—
  Act. No. 8120 ........................................ 51
- Department of Agriculture—West Virginia Rural Rehabilitation Program—Act. No. 8190-13 ........................................ 51

### MISCELLANEOUS BOARDS AND COMMISSIONS

- Public Service Commission—Act. No. 8280 ........................................ 66
- Public Service Commission—Consumer Advocate—
  Act. No. 8295 ........................................ 68
- Public Service Commission—Gas Pipeline Division—
  Act. No. 8285 ........................................ 67
- Public Service Commission—Motor Carrier Division—
  Act. No. 8290 ........................................ 67
- Real Estate Commission—Act. No. 8010 ........................................ 66
PAYABLE FROM STATE ROAD FUND

DEPARTMENT OF TRANSPORTATION

Division of Highways—Acct. No. 6700 .................................................. 63
Division of Motor Vehicles—Acct. No. 6710 ........................................ 65

§6. Awards for claims against the state.

§7. Supplemental and deficiency appropriations.

Division of Human Services—Acct. No. 4050 ........................................ 69
Treasurer’s Office—Acct. No. 1600 ...................................................... 69

§8. Appropriations from surplus revenue.

Board of Risk and Insurance Management—Acct. No. 2250 .................... 70
Department of Agriculture—Soil Conservation Committee—
   Acct. No. 5120 ........................................................................ 70
Governor’s Office—Debt Service—Acct. No. 1250 .................................. 70
Office of Community and Industrial Development—
   Acct. No. 1210 ........................................................................ 70
State Board of Education—Vocational Division—Acct. No. 2890 ............. 70


§10. Appropriations from federal block grants.

PAYABLE FROM FEDERAL FUNDS

Division of Health—Alcohol and Drug Abuse
   Treatment and Rehabilitation—Acct. No. 8610 ................................... 73
Division of Health—Alcohol, Drug Abuse and
   Mental Health—Acct. No. 8503 ....................................................... 72
Division of Health—Community Youth
   Activity Program—Acct. No. 8504 ................................................... 72
Division of Health—Maternal and Child Health—Acct. No. 8502 ............. 72
Division of Health—Mental Health Services for the Homeless—
   Acct. No. 8508 ........................................................................ 72
Division of Health—Preventive Health—Acct. No. 8506 ......................... 72
Division of Human Services—Energy Assistance—Acct. No. 9147 .......... 73
Division of Human Services—Social Services—Acct. No. 9161 ............... 73
Office of Community and Industrial Development—
   Community Development—Acct. No. 8029 ....................................... 71
Office of Community and Industrial Development—
   Community Service—Acct. No. 8031 ............................................. 71
Office of Community and Industrial Development—
   Job Partnership Training Act—Acct. No. 8030 .................................. 71
Office of Community and Industrial Development—
   Justice Assistance—Acct. No. 8032 ............................................... 71
State Department of Education—Education Grant—Acct. No. 8242 .......... 72

§11. Special revenue appropriations.

§12. State improvement fund appropriations.

§13. Specific funds and collection accounts.


§15. Sinking fund deficiencies.

§16. Appropriations to pay costs of publication of delinquent corporations.

§17. Appropriations for local governments.

§18. Total appropriations.

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

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

Sec. 2. Appropriations of federal funds.—In accordance with article eleven, chapter four of the code, from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred ninety-one.

LEGISLATIVE

1—Senate

Acct. No. 1010

<table>
<thead>
<tr>
<th>Federal Funds Fiscal Year 1990-91</th>
<th>General Revenue Fund Fiscal Year 1990-91</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members</td>
<td>$ 277,000</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers and Employees</td>
<td>$ 1,044,759</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>$ 215,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$ 30,000</td>
</tr>
<tr>
<td>Current Expenses and</td>
<td></td>
</tr>
<tr>
<td>Contingent Fund</td>
<td>$ 510,000</td>
</tr>
<tr>
<td>Computer Supplies</td>
<td>$ 15,000</td>
</tr>
<tr>
<td>Computer Systems</td>
<td>$ 85,000</td>
</tr>
<tr>
<td>Printing Blue Book</td>
<td>—</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$ 193,000</td>
</tr>
<tr>
<td>Total</td>
<td>$ 2,369,759</td>
</tr>
</tbody>
</table>
The appropriations for the senate for the fiscal year 1989-90 are to remain in full force and effect and are hereby reappropriated to June 30, 1991. Any balances so reappropriated may be transferred and credited to the 1990-91 accounts.

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

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

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

For duties imposed by law and the senate, the clerk
of the senate shall be paid a monthly salary as provided in senate resolution adopted January 1990 and payable out of the amount appropriated for Compensation and Per Diem of Officers and Employees.

2—House of Delegates

Acct. No. 1020

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members</td>
<td>$ 855,693</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers and Employees</td>
<td>$ 583,531</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>$ 633,825</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td>$ 1,127,258</td>
</tr>
<tr>
<td>Total</td>
<td>$ 3,200,307</td>
</tr>
</tbody>
</table>

The appropriations for the house of delegates for the fiscal year 1989-90 are to remain in full force and effect and are hereby reappropriated to June 30, 1991. Any balances so reappropriated may be transferred and credited to the 1990-91 accounts.

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

The clerk of the house of delegates, with the approval of the speaker, is authorized to draw his requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the house of delegates, for any bills for supplies and services that may have been incurred by the house of delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the house of delegates' offices, the requisitions for the same to be accompanied by bills to be filed with the auditor.

The speaker of the house of delegates, upon approval of the house committee on rules, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the house resolution, and the
compensation of all personnel shall be as fixed in such
house resolution for the session, or fixed by the speaker,
with the approval of the house committee on rules,
during and between sessions of the Legislature, notwith-
standing such house resolution. The clerk of the house
is hereby authorized to draw requisitions upon the
auditor for such services, payable out of the appropri-
ation for the Compensation and Per Diem of Officers
and Employees Fund or Current Expenses and Conting-
ent Fund of the house of delegates.

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

3—Joint Expenses

(WV Code Chapter 4)

Acct. No. 1030

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Committee on</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Government and Finance</td>
<td>$</td>
<td>$ 4,318,353</td>
</tr>
<tr>
<td>Legislative Printing</td>
<td>—</td>
<td>793,200</td>
</tr>
<tr>
<td>Legislative Rule-Making</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review Committee</td>
<td>—</td>
<td>127,500</td>
</tr>
<tr>
<td>Total</td>
<td>$</td>
<td>$ 5,239,053</td>
</tr>
</tbody>
</table>

The appropriation for Joint Expenses for the fiscal
year 1989-90 is to remain in full force and effect and
is hereby reappropriated to June 30, 1991. Any balances
so reappropriated may be transferred and credited to
the 1990-91 accounts.

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

The clerk of either house, with the approval of the
president and the speaker, is authorized to make a
written request to the auditor for the transfer of
amounts from items of the appropriation for Joint
Expenses to an item or items of the appropriations for
such house, in order to protect or increase the efficiency
of the service. Upon receipt of such written request, the
auditor shall transfer the amounts as requested.

JUDICIAL

4—Supreme Court—General Judicial

<table>
<thead>
<tr>
<th>Acct. No. 1110</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ........ $</td>
</tr>
<tr>
<td>2 Annual Increment ........</td>
</tr>
<tr>
<td>3 Other Expenses ...........</td>
</tr>
<tr>
<td>4 Judges' Retirement System</td>
</tr>
<tr>
<td>5 Other Court Costs ........</td>
</tr>
<tr>
<td>6 Judicial Training Program</td>
</tr>
<tr>
<td>7 Mental Hygiene Fund ......</td>
</tr>
<tr>
<td>8 Social Security Matching ..</td>
</tr>
<tr>
<td>9 Public Employees Retirement Matching ....</td>
</tr>
<tr>
<td>10 Public Employees Health Insurance ....</td>
</tr>
<tr>
<td>11 Total .................. $</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in this appropriation at the close of the fiscal year 1989-90 are hereby reappropriated for expenditure during the fiscal year 1990-91. Any balances so reappropriated may be transferred and credited to the 1990-91 accounts.

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

The appropriation for Judges' Retirement System is to be transferred to the judges' retirement fund, in
accordance with the law relating thereto, upon requisition of the administrative director of the supreme court of appeals.

**EXECUTIVE**

5—*Governor's Office*

(WV Code Chapter 5)

Acct. No. 1200

1. Salary of Governor .............. $ — $ 72,000
2. Unclassified ..................... — $ 1,242,275
3. Total .............................. $ — $ 1,314,275

6—*Governor's Office—Custodial Fund*

(WV Code Chapter 5)

Acct. No. 1230

1. Unclassified—Total .............. $ — $ 363,405
2. To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.

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

(WV Code Chapter 5)

Acct. No. 1240

1. Humanities Foundation
   2. Grants .......................... $ — $ —0—
   3. Civil Contingent
   4. Fund ............................ — $ 1,430,000
   5. Total ............................ $ — $ 1,430,000

Any unexpended balance remaining in the appropriation (account no. 1240-06) at the close of the fiscal year 1989-90 is hereby reappropriated for expenditure during the fiscal year 1990-91.

From this appropriation there may be expended, at the discretion of the governor, an amount not to exceed $1,000 as West Virginia’s contribution to the Interstate Oil Compact Commission.
### Ch. 10] APPROPRIATIONS

#### 8—Governor's Office—
Debt Service  
(WV Code Chapter 5)  
Acct. No. 1250

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan Payback to Consolidated Investment</td>
<td>$211</td>
</tr>
</tbody>
</table>

#### 9—Auditor’s Office—General Administration  
(WV Code Chapter 12)  
Acct. No. 1500

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Auditor</td>
<td>$46,800</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$1,461,038</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$27,216</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$396,142</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$583,885</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,470,081</strong></td>
</tr>
</tbody>
</table>

#### 10—Treasurer’s Office  
(WV Code Chapter 12)  
Acct. No. 1600

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Treasurer</td>
<td>$50,400</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$1,716,625</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$17,796</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$489,734</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$2,732,599</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$5,007,154</strong></td>
</tr>
</tbody>
</table>

#### 11—Treasurer’s Office—  
School Building Sinking Fund  
(WV Code Chapter 12)  
Acct. No. 1650

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$9,414,500</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Treasurer’s Office—School Building Sinking Fund (account no. 1650-06) at the close of the fiscal year 1989-90 is hereby reappropriated for expenditure during the fiscal year 1990-91.

Funds transferred to the treasurer’s office from the
proceeds of the “Better School Building Amendment” as well as investment earnings thereon are hereby appropriated for use as debt service on bonds issued under authorization of that amendment.

12—Attorney General

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

Acct. No. 2400

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Attorney</td>
<td>$50,400</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$1,646,640</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$4,176</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$389,564</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$760,022</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,850,802</strong></td>
</tr>
</tbody>
</table>

When legal counsel or secretarial help is appointed by the attorney general for any state spending unit, this account shall be reimbursed from such unit’s appropriated account.

13—Secretary of State

(WV Code Chapters 3, 5 and 59)

Acct. No. 2500

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Secretary of State</td>
<td>$43,200</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$432,808</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$4,050</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$133,662</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$156,916</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$770,636</strong></td>
</tr>
</tbody>
</table>

14—State Elections Commission

(WV Code Chapter 3)

Acct. No. 2600

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$11,058</td>
</tr>
</tbody>
</table>

15—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 5100

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$46,800</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$1,942,382</td>
</tr>
<tr>
<td></td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
</tr>
</tbody>
</table>

Out of the above general revenue funds a sum may be used to match federal funds for the eradication and control of pest and plant disease.

16—Department of Agriculture—
Soil Conservation Committee
(WV Code Chapter 19)

Acct. No. 5120

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>316,590</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>4,140</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>77,198</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>91,825</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>489,753</td>
</tr>
</tbody>
</table>

17—Department of Agriculture—
Division of Rural Resources
(Matching Fund)
(WV Code Chapter 19)

Acct. No. 5130

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>368,777</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>5,652</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>128,559</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>228,345</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>731,333</td>
</tr>
</tbody>
</table>

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

18—Department of Agriculture—
Meat Inspection
(WV Code Chapter 19)

Acct. No. 5140

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>242,112</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>5,526</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>101,373</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>503,196</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>371,158</td>
</tr>
</tbody>
</table>

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

**19—Department of Agriculture—Agricultural Awards**

(WV Code Chapter 19)

Acct. No. 5150

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Agricultural Awards</td>
<td>64,505</td>
</tr>
<tr>
<td>2</td>
<td>Fairs and Festivals</td>
<td>181,028</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>245,533</td>
</tr>
</tbody>
</table>

**DEPARTMENT OF ADMINISTRATION**

**20—Division of Finance and Administration**

(WV Code Chapter 5A)

Acct. No. 2100

1 Any unexpended balance remaining in the appropriation for Urban Mass Transit Matching Funds (account no. 2100-41) at the close of the fiscal year 1989-90 is hereby reappropriated for expenditure during the fiscal year 1990-91.

**21—Division of Finance**

(WV Code Chapter 5A)

Acct. No. 2110

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>450,226</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>6,725</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>134,199</td>
</tr>
<tr>
<td>4</td>
<td>National Governors' Association</td>
<td>57,400</td>
</tr>
<tr>
<td>5</td>
<td>Southern States</td>
<td>28,732</td>
</tr>
</tbody>
</table>
22—Division of Purchasing

(WV Code Chapter 5A)

Acct. No. 2120

1 Personal Services ........ $ — $ 585,840
2 Annual Increment ......... — 6,684
3 Employee Benefits ........ — 166,581
4 Unclassified ............. — 96,210
5 Total .................... $ — $ 855,315

The division of highways shall reimburse account no. 8148-42 for all actual expenses incurred pursuant to the provisions of section thirteen, article two-a, chapter seventeen of the code.

23—Division of General Services

(WV Code Chapter 5A)

Acct. No. 2130

1 Personal Services ........ $ — $ 519,084
2 Annual Increment ......... — 13,032
3 Employee Benefits ........ — 183,317
4 Fire Service Fee ........... — 39,000
5 Unclassified ............. — 889,360
6 Total .................... $ — $ 1,643,793

24—Board of Risk and Insurance Management

(WV Code Chapter 29)

Acct. No. 2250

1 Personal Services ........ $ — $ —0—
2 Unclassified ............. — 4,043,852
3 FEMA Reimbursement .... — —0—
4 Total .................... $ — $ 4,043,852
5 The Unclassified item of appropriation herein in-
cludes funding for the purpose of paying premiums, self-
insurance losses, loss adjustment expenses and loss
prevention engineering fees for property, casualty and
fidelity insurance for the various state agencies, except
those operating from special revenue funds, with such
special revenue fund agencies to be billed by the board
of risk and insurance management and with such costs
to be a proper charge against such spending units.

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

25—Commission on Uniform State Laws

(WV Code Chapter 29)

Acct. No. 2450

1 Unclassified—Total .......... $ — $ 14,550
2 To pay expenses of members of the commission on
3 uniform state laws.

26—Department of Administration—
Office of the Secretary

(WV Code Chapter 5F)

Acct. No. 5310

1 Unclassified—Total .......... $ — $ 182,456

27—Public Defender Services

(WV Code Chapter 29)

Acct. No. 5900

1 Personal Services ............ $ — $ 227,547
2 Annual Increment ............ — $ 2,232
3 Employee Benefits .......... — $ 56,871
4 Unclassified ................. — $ 8,177,635
5 Total ....................... $ — $ 8,464,285

Any unexpended balance remaining in the appropri-
ation for Unclassified (account no. 5900-18) at the close
of the fiscal year 1989-90 is hereby reappropriated for expenditure during the fiscal year 1990-91.

28—Education and State Employees Grievance Board

(WV Code Chapter 18)

Acct. No. 6015

1 Personal Services .............. $     —     $ 327,294
2 Annual Increment .............. —     3,348
3 Employee Benefits ............ —     76,648
4 Unclassified ................. — 121,420
5 Total ......................... $     —     $ 528,710

29—Public Employees Retirement System

(WV Code Chapter 5)

Acct. No. 6140

1 Supplemental Benefits for
2 Annuitants—Total .............. $     —    $ 1,928,500
3 The division of highways, division of motor vehicles,
4 workers’ compensation commissioner, public service
5 commission and other departments or divisions operat-
6 ing from special revenue funds and/or federal funds
7 shall pay their proportionate share of the retirement
8 costs for their respective divisions. When specific
9 appropriations are not made, such payments may be
10 made from the balances in the various special revenue
11 funds in excess of specific appropriations.

30—Public Employees Insurance Agency

(WV Code Chapter 5)

Acct. No. 6150

1 The above appropriation and any special revenue
2 received are intended to cover employers’ contribution
3 as defined in article sixteen, chapter five of the code.

4 The division of highways, division of motor vehicles,
5 workers’ compensation commissioner, public service
6 commission and other departments or divisions operat-
7 ing from special revenue funds and/or federal funds
8 shall pay their proportionate share of the public
9 employees health insurance cost for their respective
divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

31—Ethics Commission
(WV Code Chapter 6B)
Acct. No. 6180

1 Unclassified—Total ........ $....... $ 388,465

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

32—Office of Community and Industrial Development
(WV Code Chapter 5B)
Acct. No. 1210

1 Personal Services ............... $....... $ 1,378,937
2 Annual Increment ................. —........ 20,404
3 Employee Benefits ............... —........ 334,751
4 Partnership Grants ............... —........ 1,000,000
5 Unclassified .................... $14,629,478 $ 2,020,929
6 Total ........................... $14,629,478 $ 4,755,021

Any unexpended balance remaining in the appropriations for Partnership Grants (account no. 1210-15) at the close of the fiscal year 1989-90 is hereby reappropriated for expenditure during the fiscal year 1990-91.

33—Solid Waste Management Board
(WV Code Chapter 16)
Acct. No. 4020

1 Personal Services ............... $....... $ ———
2 Annual Increment ................. —........ ———
3 Employee Benefits ............... —........ ———
4 Unclassified .................... —........ ———
5 Total ........................... $....... $ ———

34—Division of Labor
(WV Code Chapters 21 and 47)
Acct. No. 4500

1 Personal Services ............... $....... $ 819,677
<table>
<thead>
<tr>
<th></th>
<th>Annual Increment</th>
<th>Employee Benefits</th>
<th>Unclassified</th>
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<tbody>
<tr>
<td>1</td>
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<tr>
<td>2</td>
<td>$13,371</td>
<td>$270,681</td>
<td>$298,836</td>
<td>$1,378,384</td>
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**35—Division of Commerce**

(WV Code Chapter 5B)

Acct. No. 4625

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Employee Benefits</th>
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<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$1,300,000</td>
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<td></td>
<td>$6,103,831</td>
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<td>2</td>
<td>$601,031</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
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</tr>
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<td>4</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

**36—Division of Forestry**

(WV Code Chapter 19)

Acct. No. 4650

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>Annual Increment</th>
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<tr>
<td>1</td>
<td>$1,933,981</td>
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<td></td>
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<td>$2,853,542</td>
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<td>5</td>
<td>Total</td>
<td></td>
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</tr>
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</table>

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

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

(WV Code Chapter 22)

Acct. No. 4720

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>Annual Increment</th>
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<tbody>
<tr>
<td>1</td>
<td>$41,362</td>
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<td>$310</td>
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<tr>
<td>2</td>
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</table>
3 Employee Benefits .......... — $ 10,879
4 Unclassified ................ — $ 8,341
5 Total .................. $ — $ 60,892

38—Interstate Commission on Potomac River Basin
(WV Code Chapter 29)
Acct. No. 4730

1 West Virginia’s
2 Contribution to
3 the Interstate Commission on Potomac River Basin—
4 Total .................. $ — $ 26,905

39—Ohio River Valley Water Sanitation Commission
(WV Code Chapter 29)
Acct. No. 4740

1 West Virginia’s
2 Contribution to the
3 Ohio River Valley Water Sanitation
4 Commission—Total........ $ — $ 89,140

40—Coal Mine Safety and Technical Review Committee
(WV Code Chapter 22)
Acct. No. 4750

1 Personal Services .......... $ — $ 5,528
2 Employee Benefits .......... — $ 1,439
3 Unclassified ................ — $ 61,384
4 Total .................. $ — $ 68,351

41—Air Pollution Control Commission
(WV Code Chapter 16)
Acct. No. 4760

1 Personal Services .......... $ — $ 460,209
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$5,620</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$135,066</td>
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<tr>
<td>4</td>
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<td>$1,038,682</td>
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<td>5</td>
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<td>$1,038,682</td>
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</table>

#### 42—Division of Energy

(WV Code Chapter 22)

Acct. No. 4775

<table>
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<th>Item</th>
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<td>$71,673,916</td>
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<td>5</td>
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<td>$71,673,916</td>
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</table>

#### 43—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 5200

<table>
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<th>Item</th>
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<td>3</td>
<td>Employee Benefits</td>
<td>$—</td>
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<tr>
<td>4</td>
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<td>$433,034</td>
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<td>Total</td>
<td>$433,034</td>
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</table>

Any unexpended balance remaining in the appropriation To Secure Federal and Other Contracts (account no. 5200-07) at the close of the fiscal year 1989-90 is hereby appropriated for expenditure during the fiscal year 1990-91.

The Unclassified appropriation includes funding to secure federal and other contracts and may be transferred to a special revenue account for the purpose of providing advance funding for such contracts.

#### 44—Department of Commerce,

*Labor and Environmental Resources—Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5321

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1</td>
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</table>
## 45—Water Resources Board
(WV Code Chapter 20)

Acct. No. 5640

<table>
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<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
<td>$0.00</td>
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<td>Employee Benefits</td>
<td>$0.00</td>
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<tr>
<td>Unclassified</td>
<td>$0.00</td>
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<tr>
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<td>$0.00</td>
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## 46—Division of Natural Resources
(WV Code Chapter 20)

Acct. No. 5650

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,359,322</td>
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<tr>
<td>Annual Increment</td>
<td>$44,622</td>
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<td>Employee Benefits</td>
<td>$727,357</td>
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<tr>
<td>Black Fly Control</td>
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<tr>
<td>Spraying Project</td>
<td>$223,100</td>
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<td>Unclassified</td>
<td>$10,459,364</td>
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<tr>
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<td>$10,459,364</td>
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</table>

## 47—Water Development Authority
(WV Code Chapter 20)

Acct. No. 5670

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$14,703,579</td>
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</table>

**DEPARTMENT OF EDUCATION**

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

Acct. No. 2860

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$2,565,697</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$33,418</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$614,530</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$1,899,718</td>
</tr>
<tr>
<td>Total</td>
<td>$7,557,905</td>
</tr>
</tbody>
</table>
Education of Institutionalized Juveniles .................. $1,176,651

Total .................. $1,899,718 $11,948,201

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

The state board of education shall transfer the balance of funds and investment earnings thereon remaining from the “Better School Building Amendment” to the office of the treasurer to be applied to repayment of bonds issued for the purposes of that amendment.

49—State Department of Education—
School Lunch Program
(WV Code Chapters 18 and 18A)

Acct. No. 2870

1 Personal Services ....... $ — $ 135,298
2 Annual Increment ...... — 1,476
3 Employee Benefits ..... — 60,189
4 Unclassified .......... 50,688,037 1,689,927
5 Total .................. $50,688,037 $ 1,886,890

50—State Board of Education—
Vocational Division
(WV Code Chapters 18 and 18A)

Acct. No. 2890

1 Personal Services ....... $ — $ 599,019
2 Annual Increment ...... — 8,209
3 Employee Benefits ..... — 154,896
4 Unclassified .......... 11,062,512 11,629,956
5 Albert Yanni Vocational Program ............... — 160,000
6 Wood Products—Forestry
7 Vocational Programs..... — — 0—
8 Total .................. $11,062,512 $ 12,552,080

51—State Department of Education—
State Aid to Schools
(WV Code Chapters 18 and 18A)

Acct. No. 2950

1 Unclassified ............. $ 4,500,000 $737,535,332
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
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<tbody>
<tr>
<td>2</td>
<td>Salary Equity</td>
<td>20,500,000</td>
</tr>
<tr>
<td>3</td>
<td>Public Employees</td>
<td>78,449,000</td>
</tr>
<tr>
<td>4</td>
<td>Insurance Agency</td>
<td>103,900,000</td>
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<tr>
<td>5</td>
<td>Teachers' Retirement</td>
<td>4,500,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>940,384,332</td>
</tr>
</tbody>
</table>

52—State Department of Education—Aid for Exceptional Children
(WV Code Chapters 18 and 18A)

Acct. No. 2960

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>23,292,129</td>
</tr>
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</table>

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

Acct. No. 3330

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>2,884,486</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>4,572</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>986,131</td>
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<td>4</td>
<td>Unclassified</td>
<td>1,257,466</td>
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<tr>
<td>5</td>
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<td>6,132,655</td>
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</table>

54—State FFA-FHA Camp and Conference Center
(WV Code Chapters 18 and 18A)

Acct. No. 3360

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>127,331</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>2,792</td>
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<td>Employee Benefits</td>
<td>25,835</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>66,404</td>
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<td>5</td>
<td>Total</td>
<td>222,365</td>
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</table>

55—State Board of Rehabilitation—Division of Rehabilitation Services
(WV Code Chapter 18)

Acct. No. 4405

<p>| | | |</p>
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<tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>3,902,403</td>
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### Ch. 10] Appropriations

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<th>Line</th>
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<td>4</td>
<td>Current Expenses</td>
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<td>Repairs and Alterations</td>
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<td>Workshop Development</td>
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<td>7</td>
<td>Case Services</td>
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<td>8</td>
<td>Unclassified</td>
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<tr>
<td>9</td>
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</table>

#### DEPARTMENT OF EDUCATION

AND THE ARTS

56—Board of Directors of the
State College System

Control Account
(WV Code Chapter 18B)

Acct. No. 2785

1 Unclassified—Total ........ $69,260,520

57—Board of Trustees of the
University System of West Virginia

Control Account
(WV Code Chapter 18B)

Acct. No. 2795

1 Unclassified—Total ........ $128,235,865

58—Board of Trustees of the University System
of West Virginia and Board of Directors of the
State College System

Consolidated Staff Account
(WV Code Chapter 18B)

Account No. 2800

1 Higher Education

2 Grant Program ................ $3,795,000

3 Contract Tuition Program .. — 606,000

4 Eminent Scholars Program — 0

5 Underwood-Smith

6 Scholarship Program—
Student Awards ................ — 0

7 EPSCOR Program .............. — 0
8 Unclassified—Central Office $ 1,006,295
9 Total $ 5,407,295

Any unexpended balance remaining in the appropriation for Asbestos Litigation (account no. 2800-21) at the close of the fiscal year 1989-90 is hereby reappropriated for expenditure during the fiscal year 1990-91.

59—Board of Trustees of the University System of West Virginia

University of West Virginia
Health Sciences Account
(WV Code Chapter 18B)
Acct. No. 2855

1 Unclassified—Total $ 46,977,475

From the above appropriation, $130,000 shall be expended towards establishing a doctor of pharmacy program at the West Virginia university health science center.

60—Educational Broadcasting Authority
(WV Code Chapter 10)
Acct. No. 2910

1 Personal Services $ 2,999,090
2 Annual Increment 41,256
3 Employee Benefits 644,994
4 Unclassified 1,136,628 1,540,273
5 Total $ 1,136,628 $ 5,225,613

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

61—Library Commission
(WV Code Chapter 10)
Acct. No. 3500

1 Personal Services $ 916,602
2 Annual Increment 21,312
3 Employee Benefits 263,003
4 Unclassified 1,147,831 6,368,877
5 Total $ 1,147,831 $ 7,569,794
62—Division of Culture and History

(WV Code Chapter 29)

Acct. No. 3510

<table>
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</thead>
<tbody>
<tr>
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<td>$ -</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$ -</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$ -</td>
</tr>
<tr>
<td>Project 2021</td>
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<tr>
<td>Unclassified</td>
<td>$1,525,000</td>
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<tr>
<td>Total</td>
<td>$1,525,000</td>
</tr>
</tbody>
</table>

The Unclassified appropriation includes funding for the Arts Funds, Department Programming Funds, Grants, Fairs and Festivals and Washington Carver Camp and shall be expended only upon authorization of the division of culture and history and in accordance with the provisions of chapter five-a and article three, chapter twelve of the code.

All federal moneys received as reimbursement to the division of culture and history for moneys expended from the general revenue fund for the Arts Fund and Historical Preservation are hereby reapropriated for the purposes as originally made, including personal services, current expenses and equipment.

63—Department of Education and the Arts—Office of the Secretary

(WV Code Chapter 5F)

Acct. No. 5332

<table>
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<th>Amount</th>
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<tr>
<td>Eminent Scholars Program</td>
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<tr>
<td>Underwood-Smith Scholarship Program—Student Awards</td>
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DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

64—Division of Health—
Central Office
(WV Code Chapter 16)

Acct. No. 4000

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<td>Corporate Nonprofit Community Health</td>
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<td>F.M.H.A.</td>
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<tr>
<td>5</td>
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<tr>
<td>6</td>
<td>Employee Benefits</td>
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<tr>
<td>7</td>
<td>Unclassified</td>
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<td>8</td>
<td>Total</td>
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</table>

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

Acct. No. 4010

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</table>

Any unexpended balances remaining in the appropriations for Repairs and Alterations (account no. 4010-02) and Equipment (account no. 4010-03) at the close of the fiscal year 1989-90 are hereby reappropriated for expenditure during the fiscal year 1990-91.

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

Acct. No. 4040

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$595,691</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$11,736</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$215,064</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$92,643</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$915,134</td>
</tr>
</tbody>
</table>
### 67—Division of Human Services
(WV Code Chapters 9, 48 and 49)

**Acct. No. 4050**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$12,393,130</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$326,002</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$3,952,984</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>Medical Services</td>
<td>$103,733,532</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$578,463,736</td>
</tr>
<tr>
<td>Family Law Masters</td>
<td>$225,000</td>
</tr>
<tr>
<td>Women's Commission</td>
<td>$53,505</td>
</tr>
<tr>
<td>Commission on Hearing Impaired</td>
<td>$43,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$578,688,736</strong></td>
</tr>
</tbody>
</table>

The Medical Services line item includes funding for Title XIX Waiver.

Funds appropriated through the Medical Services line item of account no. 4050 may not be expended to pay the cost of an abortion unless: (1) A duly licensed attending physician determines in his or her best clinical judgment that an abortion is medically necessary because (a) a continuation of the pregnancy would either endanger the life of the pregnant woman or could cause permanent, catastrophic, physical injuries to the woman; or (b) prenatal tests indicate that the child would probably be born with grave, permanent and irremediable mental and/or physical defects; or (2) the pregnancy resulted from sexual assault or incest and the sexual assault was reported to law-enforcement authorities or the incest was reported to the department of health and human resources prior to the performance of the abortion.

No funds from this account, or any other department of health and human resources account, shall be used to pay family law master salaries or expenses in excess of the Family Law Masters line item appropriation. It is anticipated that the family law master program will generate sufficient revenue from fees and federal child support funds to cover the remainder of its program costs.
### Appropriations

#### 68—Commission on Aging

(WV Code Chapter 29)

**Acct. No. 4060**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 110,795</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$ 2,416</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$ 33,839</td>
</tr>
<tr>
<td>4</td>
<td>Area Agencies on Aging Administration</td>
<td>$ 0</td>
</tr>
<tr>
<td>5</td>
<td>Substate Ombudsman</td>
<td>$ 0</td>
</tr>
<tr>
<td>6</td>
<td>Local Programs Service Delivery Costs</td>
<td>$ 2,160,426</td>
</tr>
<tr>
<td>7</td>
<td>Attorney General</td>
<td>$ 0</td>
</tr>
<tr>
<td>8</td>
<td>Silver Haired Legislature</td>
<td>$ 0</td>
</tr>
<tr>
<td>9</td>
<td>Golden Mountaineer</td>
<td>$ 0</td>
</tr>
<tr>
<td>10</td>
<td>Unclassified</td>
<td>$ 10,151,000 $ 1,001,488</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td>$ 10,151,000 $ 3,308,964</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Senior Citizen Centers—Land Acquisition, Construction Repairs and Alterations (account no. 4060-10) at the close of the fiscal year 1989-90 is hereby reappropriated for expenditure during the fiscal year 1990-91.

#### 69—Consolidated Medical Service Fund

**Acct. No. 4190**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Foster Grandparents Stipends/Travel</td>
<td>$ 62,000</td>
</tr>
<tr>
<td>2</td>
<td>Institutional Facilities Operations</td>
<td>$ 37,321,140</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$ 12,512,909</td>
</tr>
<tr>
<td>4</td>
<td>Poison Control Hotline</td>
<td>$ 250,000</td>
</tr>
<tr>
<td>5</td>
<td>ICF/MR Match</td>
<td>$ 0</td>
</tr>
<tr>
<td>6</td>
<td>Special Olympics</td>
<td>$ 28,000</td>
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<tr>
<td>7</td>
<td>State Aid to Local Agencies</td>
<td>$ 6,800,000</td>
</tr>
<tr>
<td>8</td>
<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees</td>
<td>$ 5,330,000</td>
</tr>
</tbody>
</table>
## Ch. 10] APPROPRIATIONS 231

<table>
<thead>
<tr>
<th></th>
<th>Continuum of Care</th>
<th></th>
<th>Primary Care Contracts</th>
<th></th>
<th>to Community</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Health Centers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,800,000</td>
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<tr>
<td>15</td>
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<td></td>
<td></td>
<td>17</td>
<td>250,000</td>
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<tr>
<td>16</td>
<td>Epidemiology Research</td>
<td></td>
<td>Grants to Counties and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
<td></td>
<td>EMS Entities</td>
<td></td>
<td>1,725,000</td>
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<tr>
<td>18</td>
<td>Behavioral Health Program</td>
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<td></td>
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<td></td>
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<td>19</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>36,300,930</td>
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<tr>
<td>20</td>
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<td></td>
<td></td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>26,833,606</td>
</tr>
<tr>
<td>22</td>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>$26,833,606</td>
</tr>
</tbody>
</table>

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

Additional funds have been appropriated in acct. no. 8500 for operation of the medical facilities.

### 70—Department of Health and Human Resources—Office of the Secretary

(WV Code Chapter 5F)

**Acct. No. 5343**

|   | Unclassified—Total |   | $ 181,875 |

### 71—Human Rights Commission

(WV Code Chapter 5)

**Acct. No. 5980**

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th></th>
<th>$ 367,025</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
<td>6,430</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td></td>
<td>108,384</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td></td>
<td>102,190</td>
</tr>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$ 659,428</td>
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</table>
### DEPARTMENT OF PUBLIC SAFETY

#### 72—Office of Emergency Services and Advisory Council—
**Division of Emergency Services**

(WV Code Chapter 15)

Acct. No. 1300

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ —</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>—</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$ 2,744,980</td>
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<tr>
<td><strong>Total</strong></td>
<td>$ 2,744,980</td>
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</table>

#### 73—Board of Probation and Parole

(WV Code Chapter 62)

Acct. No. 3650

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries of Members</td>
<td>$ —</td>
</tr>
<tr>
<td>of Board of Probation and Parole</td>
<td>—</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>—</td>
</tr>
<tr>
<td>Unclassified</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ 181,111</td>
</tr>
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</table>

#### 74—Division of Corrections—
**Central Office**

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3680

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ —</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>—</td>
</tr>
<tr>
<td>Unclassified</td>
<td>—</td>
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<tr>
<td><strong>Total</strong></td>
<td>$ 586,728</td>
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</table>

#### 75—Division of Corrections—
**Correctional Units**

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3770

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ —</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ 12,125,856</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Capital Outlay (account no. 3770-04) at the close of the fiscal year 1989-90 are hereby reappropriated for expenditure during the fiscal year 1990-91.

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

76—Department of Public Safety—Office of the Secretary
(WV Code Chapter 5F)

Acct. No. 5354

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$136,240</td>
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</tbody>
</table>

77—Division of Public Safety
(WV Code Chapter 15)

Acct. No. 5700

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$15,412,471</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$90,900</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$4,370,607</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$353,957 $3,432,824</td>
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<tr>
<td>Total</td>
<td>$353,957 $23,306,802</td>
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### Appropriations

#### 78—Adjutant General—State Militia

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Acct. No. 5800</th>
<th></th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$249,021</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>5,580</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>85,543</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>4,629,272</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3,645,176</td>
</tr>
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</table>

#### 79—Fire Commission

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Acct. No. 6170</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$451,336</td>
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<tr>
<td>2 Annual Increment</td>
<td>7,452</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>144,254</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>153,624</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>756,666</td>
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</tbody>
</table>

#### DEPARTMENT OF TAX AND REVENUE

#### 80—Municipal Bond Commission

(WV Code Chapter 13)

<table>
<thead>
<tr>
<th>Acct. No. 1700</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$72,333</td>
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<tr>
<td>2 Annual Increment</td>
<td>1,332</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>21,114</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>28,464</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>123,243</td>
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</table>

#### 81—Tax Division

(WV Code Chapter 11)

<table>
<thead>
<tr>
<th>Acct. No. 1800</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$8,184,063</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>148,126</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>2,368,841</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>4,801,187</td>
</tr>
</tbody>
</table>
Ch. 10] APPROPRIATIONS 235

5 Property Evaluation
6 Training and
7 Productivity
   Commission .................. — 25,000
8 Total .................. $ — $ 15,527,217

82—Division of Professional and
   Occupational Licenses—
   State Athletic Commission
   (WV Code Chapter 29)
   Acct. No. 4790
1 Unclassified—Total .... $ — $ 5,068

83—Office of Nonintoxicating
   Beer Commissioner
   (WV Code Chapter 11)
   Acct. No. 4900
1 Personal Services ........ $ — $ 304,174
2 Annual Increment ......... — 4,176
3 Employee Benefits ........ — 90,239
4 Unclassified .............. — 73,258
5 Total .................. $ — $ 471,847

84—Racing Commission
   (WV Code Chapter 19)
   Acct. No. 4950
1 Personal Services ........ $ — $ 996,474
2 Annual Increment ......... — 8,640
3 Employee Benefits ........ — 260,841
4 Unclassified .............. — 79,981
5 Total .................. $ — $ 1,345,936

85—Department of Tax and Revenue—
   Office of the Secretary
   (WV Code Chapter 5F)
   Acct. No. 5365
1 Unclassified—Total .... $ — $ 182,495
DEPARTMENT OF TRANSPORTATION

86—Department of Transportation—Office of the Secretary
(WV Code Chapter 5F)

Acct. No. 5376

1 Civil Air Patrol ................ $ — $ 82,450
2 Unclassified .................... — $ 182,340
3 Total ............................. $ — $ 264,790

87—Railroad Maintenance Authority
(WV Code Chapter 29)

Acct. No. 5690

1 Personal Services ............... $ — $ 409,355
2 Annual Increment ............... — 5,724
3 Employee Benefits ............. — 215,867
4 Unclassified .................... 348,000 180,900
5 Total ............................. $ 348,000 $ 811,846

1 Total TITLE II, Section 1—
2 General Revenue .............. $ — $ 1,757,054,039

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

Sec. 4. Appropriations of federal funds.—In accordance with article eleven, chapter four of the code, from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred ninety-one.

LEGISLATIVE

88—Crime Victims Compensation Fund
(WV Code Chapter 14)

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND
Federal Funds
Fiscal Year 1990-91

Other Funds
Fiscal Year 1990-91

1 Personal Services ....... $  —  $  105,503
2 Annual Increment ........ —  684
3 Employee Benefits ....... —  26,755
4 Unclassified .............. 700,000  34,738
5 Total ..................... $  700,000  $  167,680

These funds are intended to be expended for court costs and administrative costs and federal reimbursement for compensation paid to crime victims.

EXECUTIVE

89—Treasurer's Office—
Abandoned and Unclaimed Property
(WV Code Chapters 12 and 36)

Acct. No. 8000
TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........ $  —  $  —0—
2 Annual Increment ........ —  —0—
3 Employee Benefits ....... —  —0—
4 Unclassified .............. —  —0—
5 Total ..................... $  —  $  —0—

90—Treasurer's Office—
Board of Investments
(WV Code Chapter 12)

Acct. No. 8004
TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........ $  —  $  —0—
2 Annual Increment ........ —  —0—
3 Employee Benefits ....... —  $  —0—
4 Unclassified .............. —  —0—
5 Total ..................... $  —  $  —0—
91—Department of Agriculture
(WV Code Chapter 19)
Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$202,925</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$1,040</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$48,633</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>$460,776</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$713,374</td>
</tr>
</tbody>
</table>

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

92—General John McCausland Memorial Farm
(WV Code Chapter 19)
Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$73,643</td>
</tr>
</tbody>
</table>

Funds for the above appropriation shall be expended in accordance with article twenty-six, chapter nineteen of the code.

DEPARTMENT OF ADMINISTRATION
93—Division of Finance and Administration—Information System Services Division Fund
(WV Code Chapter 5A)
Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,880,263</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$44,307</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>$744,810</td>
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<td>4</td>
<td>Unclassified</td>
<td>$728,995</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$4,398,375</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the division of finance and administration as provided by law.

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

There is hereby established a revolving fund for postage meter service requirements for all spending units operating from the general revenue fund, from special revenue funds or receiving reimbursement for postage from the federal government.

Each spending unit shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.

94—Division of Personnel—
(WV Code Chapter 29)

Acct. No. 8401

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,988,570</td>
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<tr>
<td>Annual Increment</td>
<td>$35,352</td>
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<tr>
<td>Employee Benefits</td>
<td>$619,809</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$460,269</td>
</tr>
<tr>
<td>Total</td>
<td>$3,104,000</td>
</tr>
</tbody>
</table>

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

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

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

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND
1  Personal Services .......... $ 4,914,000
2  Annual Increment .......... 84,000
3  Employee Benefits .......... 1,500,000
4  Land Purchase and Buildings ........ 452,000
5  Renovation of Dams .......... 750,000
6  Unclassified ................. 2,500,000
7  Total ........................ $ 10,200,000

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

DEPARTMENT OF EDUCATION

96—State Board of Rehabilitation—Division of Rehabilitation Services—West Virginia Rehabilitation Center—Special Account

(WV Code Chapter 18)

Acct. No. 8137

TO BE PAID FROM SPECIAL REVENUE FUND

1  Certification of the Rehabilitation Center—Total .......... $ 200,000

DEPARTMENT OF EDUCATION AND THE ARTS

97—Higher Education Central Office—State System Registration Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)

(WV Code Chapter 18)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1  Debt Service—Total .......... $ 6,130,000
Any unexpended balances remaining in the prior years' and 1989-90 appropriations are hereby reappropriated for expenditure during the fiscal year 1990-91 except for account no. 8835-66, fiscal year 1987-88 which shall expire on June 30, 1990.

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

98—Higher Education Central Office—
State System Registration Fee—
Revenue Bond Construction Fund

(WV Code Chapter 18)

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

The total amount of this appropriation shall be paid from the proceeds of revenue bonds issued pursuant to section four, article twenty-four, chapter eighteen of the code. Projects are to be made available from the date of passage.

Any unexpended balances remaining in prior years' and the 1989-90 appropriations are hereby reappropriated and reauthorized for expenditure during the fiscal year 1990-91.

99—Higher Education Central Office—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)

(WV Code Chapter 18)

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$11,145,000</td>
</tr>
<tr>
<td>Building and Campus Renewal</td>
<td>$2,605,000</td>
</tr>
</tbody>
</table>
242

APPROPRIATIONS

[Ch. 10

5 Building and
6 Campus Renewal—
7 State University System 5,285,000
8 Facilities Planning
9 and Administration 300,000
10 Total $19,335,000

11 Any unexpended balances remaining in prior years’
12 and 1989-90 appropriations are hereby reappropriated
13 for expenditure during the fiscal year 1990-91.

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

19 The above appropriation for Building and Campus
20 Renewal—State University System is intended to
21 include Jackson’s Mill.

100—Higher Education Central Office—
State System Tuition Fee—
Revenue Bond Construction Fund

(WV Code Chapter 18)

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years’
2 and 1989-90 appropriations are hereby reappropriated
3 for expenditure during the fiscal year 1990-91.

101—West Virginia University—
Schools of Health Sciences

(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1 Unclassified—Total $14,664,430
2 Any unexpended balances remaining in the fiscal year
3 1988-89 and fiscal year 1989-90 appropriations for the
4 West Virginia University—Schools of Health Sciences at
the close of the fiscal year 1989-90 are hereby reappropriated for expenditure during the fiscal year 1990-91.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

102-Division of Health
Vital Statistics
(WV Code Chapter 16)

Acct. No. 8216-15

TO BE PAID FROM SPECIAL REVENUE

1 Personal Services ........... $ — $ 155,226
2 Annual Increment ........... — 2,844
3 Employee Benefits .......... — 51,183
4 Current Expenses ........... — 48,570
5 Equipment .................. — 16,760
6 Total ..................... $ — $ 274,583

103-Board of Barbers and Beauticians
(WV Code Chapters 16 and 30)

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........... $ — $ 122,537
2 Annual Increment ........... — 2,412
3 Employee Benefits .......... — 35,064
4 Unclassified ............... — 76,360
5 Total ..................... $ — $ 236,373

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

104—Division of Veterans' Affairs—Veterans' Home
(WV Code Chapter 19A)

Acct. No. 8260-13

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........... $ — $ 787,829
2 Annual Increment ........... — 15,660
3 Employee Benefits .......... $ — $ 262,941
4 Total .................... $ — $ 1,066,430

105—Division of Health—
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operation)
(WV Code Chapter 16)

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service ............... $ — $ 2,750,000
2 Institutional Facilities
3 Operations ............... — $ 24,900,000
4 Total .................... $ — $ 27,650,000

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 1989-90 is hereby reappropriated for expenditure during the fiscal year 1990-91.

The total amount of this appropriation shall be paid from the hospital services revenue account special fund created by section fifteen-a, article one, chapter sixteen of the code, and shall be used only for operating expenses and for improvements in connection with existing facilities, medley, and bond payments.

Projects are to be paid on a cash basis and made available from the date of passage. Items and projects of this appropriation are to begin as funds become available in the special fund or from bond proceeds.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the item designated Institutional Facilities Operations in the Consolidated Medical Services Fund (account no. 4190).

106—Workers' Compensation Fund
(WV Code Chapter 23)

Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

1 Personal Services ............ $ — $ 7,915,521
2 Annual Increment ........... — 126,630
3 Employee Benefits .......... — 2,241,299
4 Unclassified ............... — 5,795,955
5 Employers' Excess
  Liability Fund ............. — 122,937
6 Total ........................ $ — $ 16,202,342

There is hereby authorized to be paid out of the above appropriation, the amount necessary for the premiums on bonds given by the treasurer as bond custodian for the protection of the workers' compensation fund. This sum shall be transferred to the state board of insurance.

DEPARTMENT OF PUBLIC SAFETY
107—Fire Commission
Fire Marshal Fees
(WV Code Chapter 29)
Acct. No. 8017
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services ........... $ — $ 190,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment ............ — —0—</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits ........... — 68,148</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified ................. — 180,500</td>
</tr>
<tr>
<td>5</td>
<td>Total ........................ $ — $ 438,648</td>
</tr>
</tbody>
</table>

108—Division of Public Safety—Drunk Driving Prevention Fund
(WV Code Chapter 15)
Acct. No. 8355
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total ........ $ — $ 622,740</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>The total amount of this appropriation shall be paid from the special revenue fund out of receipts collected pursuant to sections nine-a and sixteen, article fifteen, chapter eleven of the code and paid into a revolving fund account in the state treasury.</td>
</tr>
</tbody>
</table>
DEPARTMENT OF TAX AND REVENUE

109—Racing Commission
(WV Code Chapter 19)
Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses—Total ... $ — $ 57,000
2 The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.
3 No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

110—Racing Commission Administration and Promotion
(WV Code Chapter 19)
Acct. No. 8081

1 Administration and
2 Promotion—Total ........ $ — $ 105,000

111—Office of Alcohol Beverage Control Commissioner
(WV Code Chapter 60)
Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ............... $ — $ 5,016,539
2 Annual Increment ............... — 109,204
3 Employee Benefits ............... — 1,772,009
4 Unclassified ..................... — 3,746,572
5 Total ........................... $ — $ 10,644,324
6 The total amount of this appropriation shall be paid from a special revenue fund out of liquor revenues.
The above appropriation includes the salary of the commissioner, salaries of store personnel and store inspectors, store operating expenses and equipment, and salaries, expenses and equipment of administration offices.

There is hereby appropriated from liquor revenues, in addition to the appropriation, the necessary amount for the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

112—Division of Motor Vehicles—
   Driver’s License Reinstatement Fund

(WV Code Chapter 17B)

Acct. No. 8421-10

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$146,422</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,440</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$38,548</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$80,500</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$4,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$20,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$290,910</strong></td>
</tr>
</tbody>
</table>

113—Division of Motor Vehicles—
   Driver Rehabilitation

(WV Code Chapter 17C)

Acct. No. 8421-11

TO BE PAID FROM SPECIAL REVENUE

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$116,384</td>
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<tr>
<td>Annual Increment</td>
<td>$1,512</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$30,948</td>
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<tr>
<td>Current Expenses</td>
<td>$379,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$17,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$544,844</strong></td>
</tr>
</tbody>
</table>

Sec. 5. Appropriations from other funds.—**
9 * * *, from the funds designated
10 there are hereby appropriated conditionally upon the
11 fulfillment of the provisions set forth in article two,
12 chapter five-a of the code, the following amounts as
13 itemized for expenditure during fiscal year one thou-
14 sand nine hundred ninety-one.
15 * * *
16
17

114—State Department of Education
(WV Code Chapters 18 and 18A)
Acct. No. 8243
TO BE PAID FROM LOTTERY NET PROFITS

| 1 | Salary Equity ................. $ | — | $ 3,520,000 |
| 2 | Elementary Computer          |
| 3 | Education .................... $ |   | 3,520,000   |
| 4 | Total ........................ $ | — | $ 7,040,000 |

5 Any unexpended balances remaining in the appropri-
6 ation Elementary Computer Education (account no. 8243-06) at the close of the fiscal year 1989-90 is hereby
7 reappropriated for expenditure during the fiscal year 1990-91.

115—Division of Health
(WV Code Chapter 29)
Acct. No. 8525
TO BE PAID FROM LOTTERY NET PROFITS

| 1 | Commission on Aging ....... $ |    | $ 600,000  |
| 2 | Continuum of Care .......... $ |    | 1,000,000  |
| 3 | Total ........................ $ | — | $ 1,600,000 |

116—Division of Commerce
(WV Code Chapter 5B)
Acct. No. 8546
TO BE PAID FROM LOTTERY NET PROFITS

| 1 | Unclassified—Total ......... $ | — | $ 11,020,000 |

Clerk’s Note: Language on lines 7, 8 and 9 and all of lines 15 through 17 were stricken by the Governor. Therefore, blank spaces have been published.
Any unexpended balance remaining in the appropriation (account no. 8546-06) at the close of the fiscal year 1989-90 is hereby reappropriated for expenditure during the fiscal year 1990-91.

117—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System

(WV Code Chapter 18B)

Acct. No. 8825

TO BE PAID FROM LOTTERY NET PROFITS

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$3,140,000</td>
</tr>
</tbody>
</table>

118—Department of Health and Human Resources

(WV Code Chapters 9, 48 and 49)

Acct. No. 9132

TO BE PAID FROM LOTTERY NET PROFITS

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Castastrophic Health Care for Senior Citizens</td>
<td>$4,950,000</td>
</tr>
<tr>
<td>Title XIX Waiver for Senior Citizens</td>
<td>$250,000</td>
</tr>
<tr>
<td>Total</td>
<td>$5,200,000</td>
</tr>
</tbody>
</table>

119—Teachers Retirement Board

(WV Code Chapter 18)

Acct. No. 9260

TO BE PAID FROM LOTTERY NET PROFITS

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$0</td>
</tr>
</tbody>
</table>
EXECUTIVE

120—Auditor's Office—
Land Department Operating Fund

(WV Code Chapters 11A, 12 and 36)

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total ........ $ — $ 11,058

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

121—Department of Agriculture—
West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Acct. No. 8190-13

TO BE PAID FROM SPECIAL REVENUE FUND

1 Student and Farm Loans—
2 Total ...................... $ — $ 375,000

122—Attorney General—
Anti-Trust Enforcement

(WV Code Chapter 47)

Acct. No. 8418-10

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ......... $ — $ 124,866
2 Annual Increment ............ — — 0—
3 Employee Benefits ............ — 29,764
4 Current Expenses ............ — 178,000
5 Repairs and Alterations ....... — 2,000
6 Equipment .................... — 110,000
7 Total ...................... $ — $ 444,630
DEPARTMENT OF ADMINISTRATION

123—Division of Finance and Administration—Revolving Fund
(WV Code Chapter 5A)
Acct. No. 8140

<table>
<thead>
<tr>
<th>TO BE PAID FROM SPECIAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services ............... $</td>
</tr>
<tr>
<td>2. Annual Increment ............... —</td>
</tr>
<tr>
<td>3. Employee Benefits ............. —</td>
</tr>
<tr>
<td>4. Unclassified ................... —</td>
</tr>
<tr>
<td>5. Total .......................... $</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund as provided by article two, chapter five-a of the code.

The above appropriation includes salaries and operating expenses.

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the purchase of supplies for resale.

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

124—Office of Community and Industrial Development
(WV Code Chapter 5B)
Acct. No. 8046-10

<table>
<thead>
<tr>
<th>TO BE PAID FROM SPECIAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Emergency Assistance—Total .......... $</td>
</tr>
</tbody>
</table>

These funds shall be transferred to the division of human services for enhancement of the federal emergency assistance program.

125—Oil and Gas Conservation Commission
(WV Code Chapter 22)
Acct. No. 8096-06

<table>
<thead>
<tr>
<th>TO BE PAID FROM SPECIAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services ............... $</td>
</tr>
<tr>
<td>2. Annual Increment ............... —</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>34,425</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>41,354</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>2,000</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>8,600</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>253,174</td>
</tr>
</tbody>
</table>

#### 126—Division of Natural Resources—
**Groundwater Planning**

(WV Code Chapter 20)

Acct. No. 8311-10

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>53,854</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>252</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>17,604</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>67,450</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>21,500</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>142,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>302,660</td>
</tr>
</tbody>
</table>

#### 127—Division of Natural Resources—
**Hazardous Waste Emergency and Response Fund**

(WV Code Chapter 20)

Acct. No. 8311-26

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>340,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>540</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>98,000</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>1,603,000</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>19,500</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>43,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>2,104,040</td>
</tr>
</tbody>
</table>

#### 128—Division of Natural Resources—
**Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 20)

Acct. No. 8311-31

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>70,000</td>
</tr>
</tbody>
</table>
### Appropriations

#### 129—Division of Natural Resources—
**Solid Waste Enforcement Fund**

(WV Code Chapter 20)

Acct. No. 8311-32

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,408,796</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$8,316</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$418,988</td>
</tr>
<tr>
<td>4 Current Expenses</td>
<td>$218,250</td>
</tr>
<tr>
<td>5 Repairs and Alterations</td>
<td>$5,500</td>
</tr>
<tr>
<td>6 Equipment</td>
<td>$139,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,198,850</strong></td>
</tr>
</tbody>
</table>

#### 130—Division of Natural Resources—
**Leaking Underground Storage Tanks**

(WV Code Chapter 20)

Acct. No. 8311-34

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$300,000</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$468</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$85,868</td>
</tr>
<tr>
<td>4 Current Expenses</td>
<td>$39,900</td>
</tr>
<tr>
<td>5 Repairs and Alterations</td>
<td>$4,500</td>
</tr>
<tr>
<td>6 Equipment</td>
<td>$20,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$450,936</strong></td>
</tr>
</tbody>
</table>

#### 131—Division of Natural Resources—
**Game, Fish and Aquatic Life Fund**

(WV Code Chapter 20)

Acct. No. 8324-06

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Current Expenses—Total</td>
<td>$35,000</td>
</tr>
</tbody>
</table>
132—Division of Natural Resources—
Nongame Fund
(WV Code Chapter 20)
Acct. No. 8324-26

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
<th>Special Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$79,300</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$180</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$19,998</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$137,553</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>$7,922</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>$5,000</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$249,953</td>
<td></td>
</tr>
</tbody>
</table>

133—Division of Natural Resources—
Planning and Development Division
(WV Code Chapter 20)
Acct. No. 8329-07

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
<th>Special Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$116,000</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$1,800</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$39,424</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$22,200</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>$1,100</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>$11,000</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$191,524</td>
<td></td>
</tr>
</tbody>
</table>

134—Division of Banking
(WV Code Chapter 47A)
Acct. No. 8392-06

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
<th>Special Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$64,454</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>$17,741</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$12,293</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$2,000</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$96,488</td>
<td></td>
</tr>
</tbody>
</table>
135—Division of Banking  
(WV Code Chapter 31A)  
Acct. No. 8395  
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$701,055</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>4,032</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>173,617</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>397,508</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,276,212</strong></td>
</tr>
</tbody>
</table>

136—Solid Waste Management Board  
(WV Code Chapter 20)  
Acct. No. 8460-10  
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$94,500</td>
</tr>
<tr>
<td>2 Employee Benefits</td>
<td>27,714</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>42,700</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>27,000</td>
</tr>
<tr>
<td>5 Payments to County</td>
<td></td>
</tr>
<tr>
<td>6 Disposal Authority</td>
<td>883,378</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,075,292</strong></td>
</tr>
</tbody>
</table>

137—Division of Forestry  
(WV Code Chapter 19)  
Acct. No. 8477-24  
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$146,000</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>17,400</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>129,700</td>
</tr>
<tr>
<td>4 Current Expenses</td>
<td>167,794</td>
</tr>
<tr>
<td>5 Repairs and Alterations</td>
<td>302,706</td>
</tr>
<tr>
<td>6 Equipment</td>
<td>48,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$811,600</strong></td>
</tr>
</tbody>
</table>
### Appropriations

#### 138—Division of Energy—Special Reclamation Fund

(WV Code Chapter 22A)

Acct. No. 8536-10

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>$332,700</td>
</tr>
<tr>
<td>2. Annual Increment</td>
<td>3,700</td>
</tr>
<tr>
<td>3. Employee Benefits</td>
<td>98,297</td>
</tr>
<tr>
<td>4. Current Expenses</td>
<td>759,422</td>
</tr>
<tr>
<td>5. Repairs and Alterations</td>
<td>3,045,000</td>
</tr>
<tr>
<td>6. Equipment</td>
<td>4,000</td>
</tr>
</tbody>
</table>

**Total** $4,243,119

#### 139—Division of Energy—Oil and Gas Reclamation Trust

(WV Code Chapter 22B)

Acct. No. 8536-14

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Repairs and Alterations</td>
<td>$125,000</td>
</tr>
</tbody>
</table>

#### 140—Division of Energy—Oil and Gas Operating Permits

(WV Code Chapter 22B)

Acct. No. 8536-25

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>$107,726</td>
</tr>
<tr>
<td>2. Annual Increment</td>
<td>792</td>
</tr>
<tr>
<td>3. Employee Benefits</td>
<td>31,925</td>
</tr>
<tr>
<td>4. Current Expenses</td>
<td>283,946</td>
</tr>
<tr>
<td>5. Repairs and Alterations</td>
<td>16,000</td>
</tr>
<tr>
<td>6. Equipment</td>
<td>10,000</td>
</tr>
</tbody>
</table>

**Total** $450,389
### Appropriations

**141—Water Resources Board**  
(WV Code Chapter 20)  
Acct. No. 8540  

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$60,152</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$864</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$18,690</td>
</tr>
<tr>
<td>Equipment</td>
<td>$41,752</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$121,458</strong></td>
</tr>
</tbody>
</table>

**142—Geological and Economic Survey**  
(WV Code Chapter 29)  
Acct. No. 8589  

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$138,350</td>
</tr>
</tbody>
</table>

The above appropriation shall be used in accordance with section four, article two, chapter twenty-nine of the code.

### DEPARTMENT OF EDUCATION

**143—State Department of Education—FFA-FHA Conference Center**  
(WV Code Chapter 18)  
Acct. No. 8245-07  

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$477,369</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$9,531</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$165,564</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$256,709</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$37,850</td>
</tr>
<tr>
<td>Equipment</td>
<td>$21,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$968,023</strong></td>
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</tbody>
</table>
### Appropriations

**144—State Department of Education—Cedar Lakes Improvement**

(WV Code Chapter 18)

Acct. No. 8245-12

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>$118,291</td>
</tr>
<tr>
<td>2</td>
<td>Repairs and Alterations</td>
<td>$30,000</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$24,240</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$172,531</td>
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</tbody>
</table>

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

145—Division of Health Laboratory Services

(WV Code Chapter 16)

Acct. No. 8215-18

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$295,397</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$4,248</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$81,480</td>
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<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$907,480</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$1,288,605</td>
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</table>

146—Health Care Cost Review Authority—Planning

(WV Code Chapter 16)

Acct. No. 8216-18

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$118,531</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$396</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$32,755</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$298,935</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$450,617</td>
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</tbody>
</table>
### 147—Division of Health—Health Facility Licensing
(WV Code Chapter 16)

**Acct. No. 8216-19**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$118,888</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$30,992</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$11,589</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$2,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,938</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$165,407</strong></td>
</tr>
</tbody>
</table>

### 148—Hospital Finance Authority
(WV Code Chapter 16)

**Acct. No. 8330**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$47,619</td>
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<tr>
<td>Annual Increment</td>
<td>0</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$10,387</td>
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<tr>
<td>Unclassified</td>
<td>$66,858</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$124,864</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by article twenty-nine-a, chapter sixteen of the code.

### 149—Health Care Cost Review Authority
(WV Code Chapter 16)

**Acct. No. 8564**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$548,081</td>
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<tr>
<td>Annual Increment</td>
<td>$5,544</td>
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<tr>
<td>Employee Benefits</td>
<td>$96,607</td>
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<tr>
<td>Unclassified</td>
<td>$365,817</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,016,049</strong></td>
</tr>
</tbody>
</table>
The above appropriation is to be expended in accordance with and pursuant to the provisions of article twenty-nine-b, chapter sixteen of the code, and from the special revolving fund designated health care cost review fund.

DEPARTMENT OF PUBLIC SAFETY

150—Regional Jail and Prison Authority

(WV Code Chapter 31)

Acct. No. 8051

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$343,589</td>
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<tr>
<td>Annual Increment</td>
<td>$2,952</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$100,338</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$131,663</td>
</tr>
<tr>
<td>Debt Service</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>Total</td>
<td>$6,578,542</td>
</tr>
</tbody>
</table>

151—Division of Public Safety—Inspection Fees

(WV Code Chapter 15)

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$454,179</td>
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<tr>
<td>Annual Increment</td>
<td>$2,160</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$137,956</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$123,070</td>
</tr>
<tr>
<td>Total</td>
<td>$717,365</td>
</tr>
</tbody>
</table>

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

152—Division of Public Safety—Barracks Construction

(WV Code Chapter 17C)

Acct. No. 8352

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$60,000</td>
</tr>
<tr>
<td></td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
</tbody>
</table>

**153—State Armory Board—General Armory Fund**

(WV Code Chapter 15)

Acct. No. 8445-07

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Budget 1</th>
<th>Budget 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>—</td>
<td>52,000</td>
</tr>
<tr>
<td>2</td>
<td>Repairs and Alterations</td>
<td>—</td>
<td>153,000</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>—</td>
<td>35,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>—</td>
<td>240,000</td>
</tr>
</tbody>
</table>

**DEPARTMENT OF TAX AND REVENUE**

154—Office of Chief Inspector

(WV Code Chapter 6)

Acct. No. 8090-06

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Budget 1</th>
<th>Budget 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>—</td>
<td>1,228,310</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>—</td>
<td>13,992</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>—</td>
<td>295,215</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>—</td>
<td>327,400</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>—</td>
<td>2,400</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>—</td>
<td>3,200</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>—</td>
<td>1,870,517</td>
</tr>
</tbody>
</table>

**155—Agency of Insurance Commissioner**

(WV Code Chapter 33)

Acct. No. 8016

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Budget 1</th>
<th>Budget 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>—</td>
<td>925,412</td>
</tr>
<tr>
<td>Appropriations</td>
<td>[Ch. 10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------------</td>
<td>---------</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>..........</td>
<td>10,654</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>..........</td>
<td>235,550</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>..........</td>
<td>525,924</td>
<td></td>
</tr>
<tr>
<td>5 Total</td>
<td>..........</td>
<td>1,697,540</td>
<td></td>
</tr>
</tbody>
</table>

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

156—Alcohol Beverage Control Commission—
Wine License Special Fund
(WV Code Chapter 60)
Acct. No. 8591-06

<table>
<thead>
<tr>
<th>TO BE PAID FROM SPECIAL REVENUE FUND</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 52,500</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$ 504</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$ 55,295</td>
</tr>
<tr>
<td>4 Current Expenses</td>
<td>$ 1,000</td>
</tr>
<tr>
<td>5 Repairs and Alterations</td>
<td>$ 289,688</td>
</tr>
<tr>
<td>6 Total</td>
<td>$ 398,987</td>
</tr>
</tbody>
</table>

DEPARTMENT OF TRANSPORTATION

157—Division of Highways
(WV Code Chapters 17 and 17C)
Acct. No. 6700

<table>
<thead>
<tr>
<th>TO BE PAID FROM STATE ROAD FUND</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Maintenance, Expressway</td>
<td>$ 63,000,000</td>
</tr>
<tr>
<td>2 Trunkline and Feeder</td>
<td>$ 89,500,000</td>
</tr>
<tr>
<td>3 Maintenance, State</td>
<td>$ 52,000,000</td>
</tr>
<tr>
<td>4 Local Services</td>
<td>$ 30,000,000</td>
</tr>
<tr>
<td>5 Maintenance, Contract</td>
<td>$ 2,000,000</td>
</tr>
<tr>
<td>6 Paving and Secondary</td>
<td>$ 1,250,000</td>
</tr>
<tr>
<td>7 Road Maintenance</td>
<td>$ 15,590,000</td>
</tr>
<tr>
<td>8 Bridge Repair and Replacement</td>
<td>$ 28,830,000</td>
</tr>
</tbody>
</table>
14 Annual Increment ........ ....... 203,000
15 Debt Service ..................... 113,300,000
16 Interstate Construction ........ 47,000,000
17 Other Federal Aid
   Programs ...................... 128,500,000
18 Appalachian Program ......... 67,000,000
19 Nonfederal Aid
   Construction .................. 16,201,000
20 Highway Litter Control ....... 2,000,000
21 Railroad Highway Grade
22 Crossing Improvements ....... 100,000
23 Total ......................... $ 656,474,000

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

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

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

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian Highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated by required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the governor. Further, for the purpose of Appalachian programs, funds appropriated to line items may be transferred to other line items upon recommendation of the commissioner and approval of the governor.
### 158—Division of Motor Vehicles
(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,279,446</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$37,278</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$661,133</td>
</tr>
<tr>
<td>Commercial Driver's License Program</td>
<td>$2,989,288</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$413,931</td>
</tr>
<tr>
<td>Reimbursement to Division of Public Safety</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>Total</td>
<td>$15,509,178</td>
</tr>
</tbody>
</table>

### 159—Division of Motor Vehicles—Motorboat Licenses
(WV Code Chapter 20)

Acct. No. 8421-05

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$113,473</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,296</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$37,408</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$80,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$5,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$2,000</td>
</tr>
<tr>
<td>Total</td>
<td>$239,177</td>
</tr>
</tbody>
</table>

### 160—Division of Motor Vehicles—Returned Check Fees
(WV Code Chapter 17)

Acct. No. 8421-08

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$58,967</td>
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<tr>
<td>Annual Increment</td>
<td>$504</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$18,627</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$25,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>$6,500</td>
</tr>
<tr>
<td>Total</td>
<td>$110,098</td>
</tr>
</tbody>
</table>
161—Division of Motor Vehicles—
Insurance Certificate Fees
(WV Code Chapter 17A)

Acct. No. 8421-09

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$462,272</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>$137,367</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$59,536</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$1,475</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$660,650</td>
</tr>
</tbody>
</table>

MISCELLANEOUS BOARDS AND COMMISSIONS

162—Real Estate Commission
(WV Code Chapter 47)

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$169,332</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$1,656</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$47,898</td>
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<td>4</td>
<td>Unclassified</td>
<td>$90,057</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$308,943</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid out of collections of license fees as provided by law.

163—Public Service Commission
(WV Code Chapter 24)

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$4,432,023</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$42,000</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$1,229,634</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>$118,332</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$118,332</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid
from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

164—Public Service Commission—
Gas Pipeline Division

(WV Code Chapter 24B)

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$123,363</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,296</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$28,849</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$168,854</td>
</tr>
<tr>
<td>Total</td>
<td>$224,469</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

165—Public Service Commission—
Motor Carrier Division

(WV Code Chapter 24A)

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,116,885</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$17,507</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$316,275</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$611,183</td>
</tr>
<tr>
<td>Total</td>
<td>$1,776,728</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.
Ch. 10]  

**Appropriations**

166—*Public Service Commission—Consumer Advocate*  
(WV Code Chapter 24)  
Acct. No. 8295  

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$308,195</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,620</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$70,270</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$268,878</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$648,963</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the public service commission.

Sec. 6. Awards for claims against the state.—There are hereby appropriated, for the remainder of the fiscal year 1989-90 and to remain in effect until June 30, 1991, from the fund as designated in the amounts as specified and for the claimants as named in enrolled house bill no. 4360, acts, Legislature, regular session, 1990—crime victims compensation funds of $143,500.00 for payment of claims against the state.

There are hereby appropriated for the fiscal year 1990-91 from the funds as designated in the amounts as specified and for the claimants as named in enrolled house bill no. 4459, acts, Legislature, regular session, 1990—state road funds of $3,607,381.72 and special revenue funds of $163,410.72.

There is hereby appropriated for the fiscal year 1990-91 from the fund as designated in the amounts as specified and for the claimants as named in enrolled house bill no. 4359 and enrolled house bill no. 4459—workers' compensation funds of $23,183.99.

There is hereby appropriated for the fiscal year 1990-91 from the fund as designated in the amounts as specified and for the claimants as named in enrolled house bill no. 4359 and enrolled house bill no. 4459—general revenue funds of $1,454,319.54.
The total amount of general revenue funds above does not include payment from the Supreme Court—General Judicial, account No. 1110, or payment from the Department of Education, account no. 2860, in the amount of $8,372.00, specifically made payable from the appropriations for the current fiscal year 1989-90.

Sec. 7. Supplemental and deficiency appropriations.—From the state fund, general revenue, except as otherwise provided, there are hereby appropriated the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred ninety to supplement the 1989-90 appropriations and to be available for expenditure upon date of passage.

167—Treasurer's Office

Acct. No. 1600

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

168—Division of Human Services

Acct. No. 4050

Employee Benefits ........ $ 0
Medical Services ............. $ 0
Unclassified ................ $ 0

Total ........................ $ 0

Sec. 8. Appropriations from surplus revenue.—The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 1990-91 out of surplus funds only, subject to the terms and conditions set forth in this section.

It is the intent and mandate of this Legislature that the following appropriations made by this section shall be payable only from the surplus accrued as of July 31, 1990.

In the event that surplus revenues as to July 31, 1990, are not sufficient to meet all of the appropriations made by this section, then the surplus shall be allocated first to provide the funds necessary for the first appropria-
tion of this section; next, to provide the funds necessary for the second appropriation of this section; and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.

169—Department of Agriculture—
Soil Conservation Committee

(WV Code Chapter 19)

Acct. No. 5120

1 Unclassified—Total ......................... $ 2,500,000

170—Governor's Office—
Debt Service

(WV Code Chapter 5)

Acct. No. 1250

1 Loan Payback to Consolidated
Investment Fund—Total ....................... $ 1,235,539

171—Board of Risk and
Insurance Management

(WV Code Chapter 29)

Acct. No. 2250

1 FEMA Reimbursement—Total............... $ 2,000,000

172—State Board of Education—
Vocational Division

(WV Code Chapters 18 and 18A)

Acct. No. 2890

1 Wood Products—Forestry
Vocational Programs—Total.................. $ 700,000

173—Office of Community and
Industrial Development

(WV Code Chapter 5)

Acct. No. 1210

1 Software Valley Programs—Total........... $ 100,000

Sec. 10. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 1990-91.

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Office of Community and Industrial Development</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Community Development</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Acct. No. 8029</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TO BE PAID FROM FEDERAL FUNDS</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$ 15,200,000</td>
</tr>
<tr>
<td>174</td>
<td>Office of Community and Industrial Development</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Job Training Partnership Act</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Acct. No. 8030</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TO BE PAID FROM FEDERAL FUNDS</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$ 44,448,332</td>
</tr>
<tr>
<td>175</td>
<td>Office of Community and Industrial Development</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Community Service</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Acct. No. 8031</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TO BE PAID FROM FEDERAL FUNDS</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$ 6,701,566</td>
</tr>
<tr>
<td>176</td>
<td>Office of Community and Industrial Development</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Justice Assistance</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Acct. No. 8032</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TO BE PAID FROM FEDERAL FUNDS</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>To Local Entities—Total</td>
<td>$ 320,000</td>
</tr>
</tbody>
</table>
178—State Department of Education—
Education Grant
Acct. No. 8242
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ...................... $ 58,586,463

179—Division of Health—
Maternal and Child Health
Acct. No. 8502
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ...................... $ 7,350,340

180—Division of Health—
Alcohol, Drug Abuse and Mental Health
Acct. No. 8503
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ...................... $ 7,500,000

181—Division of Health—
Community Youth Activity Program
Acct. No. 8504
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ...................... $ 68,509

182—Division of Health—Preventive Health
Acct. No. 8506
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ...................... $ 1,499,600

183—Division of Health—
Mental Health Services for the Homeless
Acct. No. 8508
TO BE PAID FROM FEDERAL FUNDS
1 Unclassified—Total ...................... $ 400,000
184—Division of Health—
Alcohol and Drug Abuse Treatment and Rehabilitation
Acct. No. 8510
TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ...................... $  250,000

185—Division of Human Services—
Energy Assistance
Acct. No. 9147
TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ...................... $ 10,500,000

186—Division of Human Services—
Social Services
Acct. No. 9161
TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ...................... $ 21,000,000

Sec. 11. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year one thousand nine hundred ninety-one appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve, and article two, chapter five-a of the code, unless the spending unit has filed with the director of the budget, the auditor and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.
Sec. 12. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year one thousand nine hundred ninety-one, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year one thousand nine hundred ninety-one to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 13. Specific funds and collection accounts.—A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 14. Appropriations for refunding erroneous payment.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he shall issue his requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 15. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage
finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligations or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 16. Appropriations to pay costs of publication of delinquent corporations.—There is hereby appropriated out of the state fund, general revenue, out of funds not otherwise appropriated, to be paid upon requisition of the auditor and/or the governor, as the case may be, a sum sufficient to pay the cost of publication of delinquent corporations as provided by sections eighty-four and eighty-six, article twelve, chapter eleven of the code.

Sec. 17. Appropriations for local governments.—There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

Sec. 18. Total appropriations.—Where only a total sum is appropriated to a spending unit, the total sum
shall include personal services, annual increment, employee benefits, current expenses, repairs and alterations, equipment and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I—GENERAL PROVISIONS, Sec. 3.

Sec. 19. General school fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with section sixteen, article nine-a, chapter eighteen of the code.

TITLE III. ADMINISTRATION.
§1. Appropriations conditional.
§2. Constitutionality.

TITLE III—ADMINISTRATION.

Section 1. Appropriations conditional.—The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of article two, chapter five-a of the code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that reappropriations shall be to the succeeding or later spending unit created unless otherwise indicated.

Sec. 2. Constitutionality.—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 11
(H. B. 4226—By Delegates B. Hatfield and White)

[Passed February 28, 1990; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire a certain unexpended amount of reappropriated funds of Account No. 1030, Joint Expenses, as approp-
riated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, and transferring such amount to Account No. 4050-21, Medical Services.

Be it enacted by the Legislature of West Virginia:

1 That the sum of five hundred thousand dollars of the reappropriated balance in Account No. 1030-05, Joint Expenses, line item on Joint Committee on Government and Finance, from fiscal year 1985-86, including balances carried forward on the first day of July, one thousand nine hundred eighty-nine, available for expenditure in the current fiscal year 1989-90, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, be supplemented, amended, reduced and caused to expire, and that said sum be transferred to Account No. 4050-21, Medical Services. Said sum is hereby appropriated and available for expenditure upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire out of appropriations for Joint Expenses the sum of five hundred thousand dollars, to transfer this sum into the Medical Services Fund, such moneys being formerly appropriated by the language of "Sec. 1. Appropriations from general revenue." This bill shall be effective upon the date of passage.

CHAPTER 12
(S. B. 624—Originating in the Committee on Finance)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts of reappropriated general revenue funds in Account No. 1110, Supreme Court—General Judicial, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the
budget bill; and certain unexpended amounts in Account No. 7320-10, Municipal Bond Commission—State Sinking Fund—Operating Account; and transferring specified amounts to Account No. 4050-21, Medical Services, Account No. 8380-24, Board of Social Workers and Account No. 8215-25, Medical Licensing Board.

Be it enacted by the Legislature of West Virginia:

That the following sums from the reappropriated balance from fiscal year 1985-1986, including balances carried forward on the first day of July, one thousand nine hundred eighty-nine, in the designated line items of Account No. 1110, Supreme Court-General Judicial, as appropriated from general revenue by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, be supplemented, amended, reduced and caused to expire:

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$148,575</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$761</td>
</tr>
<tr>
<td>3</td>
<td>Other Expenses</td>
<td>$80,000</td>
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<tr>
<td>4</td>
<td>Other Court Costs</td>
<td>$132,121</td>
</tr>
<tr>
<td>5</td>
<td>Judicial Training</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Program</td>
<td>$132,614</td>
</tr>
<tr>
<td>7</td>
<td>Mental Hygiene Fund</td>
<td>$16,615</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$510,686</td>
</tr>
</tbody>
</table>

That the sum of nine hundred thousand dollars from Account No. 7320-10, Municipal Bond Commission—State Sinking Fund—Operating Account be supplemented, amended, reduced and caused to expire and that the sum of one million two hundred ninety thousand six hundred eighty-six dollars be transferred to Account No. 4050-21, Medical Services; and that the sum of one hundred thousand dollars be transferred to Account No. 8215-25, Medical Licensing Board, and that the sum of twenty thousand dollars be transferred to Account No. 8380-24, Board of Social Workers.

That the aforesaid transferred funds be available for expenditure from the respective accounts upon the effective date of this bill.
The purpose of this bill is to supplement, reduce and cause to expire certain unexpended amounts of reappropriated funds out of Account No. 1110, Supreme Court-General Judicial and Account No. 7320-10, Municipal Bond Commission-State Sinking Fund-Operating Account the total sum of one million four hundred ten thousand six hundred eighty-six dollars and to transfer the sum of one million two hundred ninety thousand six hundred eighty-six dollars to Account No. 4050-21, Medical Services, the sum of one hundred thousand dollars to Account No. 8215-25, Medical Licensing Board, and the sum of twenty thousand dollars to Account No. 8380-24, Board of Social Workers, and that the aforesaid transferred sums be available for expenditure in the respective accounts immediately upon the effective date of this bill.

CHAPTER 13
(S. B. 450—Originating in the Committee on Finance)

[Passed February 22, 1990: in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriations of the tax division, as appropriated by chapter ten, Acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of Account No. 1800, chapter ten, Acts of the Legislature, regular session, one thousand nine hundred eighty-nine, be supplemented, amended and transferred to read as follows:

1 TITLE II— Appropriations.
2 Section 1. Appropriations From General Revenue.
3 DEPARTMENT OF TAX AND REVENUE.
4 90—Tax Division
5 (WV Code Chapter 11)
6 Account No. 1800
7 1 Personal Services .......... $ — $ 8,478,652
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys between items of the existing appropriation for the designated spending unit. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred ninety shall be made available for expenditure upon the effective date of this bill.

CHAPTER 14
(H. B. 4592—By Delegate Farley, By Request)
[Passed March 8. 1990: in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations of the Commission on Aging, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of Account No. 4060, chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, be supplemented, amended and transferred to read as follows:

1 Title II—Appropriations.

2 Section 1. Appropriations from general revenue.

3 Department of Health and Human Resources

4 75—Commission on Aging

5 (WV Code Chapter 29)

6 Acct. No. 4060

7 Area Agencies on Aging

8 Administration....................... $ 201,483
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys between items of the existing appropriation for the designated spending unit. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred ninety shall be made available for expenditure upon the effective date of this bill.

**CHAPTER 15**

*(H. B. 4589—By Delegate Farley, By Request)*

[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations of the Office of Nonintoxicating Beer Commissioner, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

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

That the items of the total appropriation of Account No. 4900, chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, be supplemented, amended and transferred to read as follows:

1. **TITLE II—APPROPRIATIONS.**
2. **Section 1. Appropriations from general revenue.**
3. **DEPARTMENT OF TAX AND REVENUE**
   4. **92—Office of Nonintoxicating Beer Commissioner**
   5. (WV Code Chapter 11)
   6. Acct. No. 4900
   7. 1 Personal Services ......................... $297,407
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys between items of the existing appropriation for the designated spending unit. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred ninety shall be made available for expenditure upon the effective date of this bill.

CHAPTER 16
(H. B. 4588—By Delegate Farley, By Request)

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations of the Racing Commission, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of Account No. 4950, chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, be supplemented, amended and transferred to read as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 DEPARTMENT OF TAX AND REVENUE
4 93—Racing Commission
5 (WV Code Chapter 19)
6 Acct. No. 4950
7 1 Personal Services ....................... $1,015,293
8 2 Annual Increment ....................... 7,488
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys between items of the existing appropriation for the designated spending unit. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred ninety shall be made available for expenditure upon the effective date of this bill.

**CHAPTER 17**

*H. B. 4678—By Delegate Farley*

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations of the Division of Personnel of the Civil Service System and the Civil Service Commission, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

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

That the items of the total appropriation of Account No. 5840, chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, be supplemented, amended and transferred to read as follows:

<table>
<thead>
<tr>
<th>Title II—Appropriations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Section 1. Appropriations from General Revenue.</td>
</tr>
<tr>
<td>2 Department of Administration</td>
</tr>
<tr>
<td>3 26—Division of Personnel of the Civil Service System and the Civil Service Commission</td>
</tr>
<tr>
<td>4 Acct. No. 5840</td>
</tr>
<tr>
<td>5 Personal Services $ 570,718</td>
</tr>
<tr>
<td>6 Employee Benefits $ 184,895</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys between items of the existing appropriation for the designated spending unit. The amounts, as itemized for expenditure during the fiscal year one thousand nine hundred ninety, shall be made available for expenditure upon the effective date of this bill.

CHAPTER 18
(H. B. 4387—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety, to the West Virginia Department of Transportation, Division of Highways, Account No. 6700, supplementing chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 10, 1990, wherein on page XI thereof are set forth the revenues and expenditures of the State Road Fund, including fiscal year 1989-1990; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1989-1990, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That the total appropriations from the state road fund to the West Virginia Department of Transportation, Division of Highways, Account No. 6700, for the fiscal year ending the
thirtieth day of June, one thousand nine hundred ninety, as
appropriated by chapter ten, acts of the Legislature, regular
session, one thousand nine hundred eighty-nine, known as the
budget bill, be supplemented, amended and thereafter read as
follows:

1 TITLE II. APPROPRIATIONS

2 Section 3. Appropriations from Other Funds.

3 Section 4. Appropriations of Federal Funds.

4 DEPARTMENT OF TRANSPORTATION

5 125—Division of Highways

6 (WV Code Chapters 17 and 17C)

7 Acct. No. 6700

8 TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th></th>
<th>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year 1989-1990</td>
<td>Fiscal Year 1989-1990</td>
</tr>
<tr>
<td>13</td>
<td>Maintenance, Expressway</td>
<td>63,500,000</td>
</tr>
<tr>
<td>14</td>
<td>Trunkline and Feeder</td>
<td>$0</td>
</tr>
<tr>
<td>15</td>
<td>Maintenance, State</td>
<td>89,318,000</td>
</tr>
<tr>
<td>16</td>
<td>Local Services</td>
<td>$0</td>
</tr>
<tr>
<td>17</td>
<td>Maintenance, Contract</td>
<td>65,750,000</td>
</tr>
<tr>
<td>18</td>
<td>Paving and Secondary</td>
<td>$0</td>
</tr>
<tr>
<td>19</td>
<td>Road Maintenance</td>
<td>$0</td>
</tr>
<tr>
<td>20</td>
<td>Bridge Repair and Replacement</td>
<td>27,000,000</td>
</tr>
<tr>
<td>21</td>
<td>Industrial Access Road</td>
<td>1,899,000</td>
</tr>
<tr>
<td>22</td>
<td>Inventory Revolving</td>
<td>1,500,000</td>
</tr>
<tr>
<td>23</td>
<td>Equipment Revolving</td>
<td>15,514,000</td>
</tr>
<tr>
<td>24</td>
<td>General Operations</td>
<td>30,104,000</td>
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<tr>
<td>25</td>
<td>Annual Increment</td>
<td>206,000</td>
</tr>
<tr>
<td>26</td>
<td>Debt Service</td>
<td>89,300,000</td>
</tr>
<tr>
<td>27</td>
<td>Interstate Construction</td>
<td>47,500,000</td>
</tr>
<tr>
<td>28</td>
<td>Other Federal Aid Programs</td>
<td>136,500,000</td>
</tr>
<tr>
<td>29</td>
<td>Appalachian Program</td>
<td>30,000,000</td>
</tr>
<tr>
<td>30</td>
<td>Nonfederal Aid Construction</td>
<td>13,721,000</td>
</tr>
</tbody>
</table>
CHAPTER 19
(Com. Sub. for H. B. 4400—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed February 27, 1990; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety, to the West Virginia Department of Transportation, Division of Motor Vehicles, Account No. 6710, supplementing chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 10, 1990, wherein on Page XI thereof are set forth the revenues and expenditures of the State Road Fund, including fiscal year 1989-1990; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1989-1990, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Highway Litter</th>
<th>Control</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>34</td>
<td>20</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>21</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td></td>
<td></td>
<td></td>
<td>$613,742,000</td>
</tr>
</tbody>
</table>

*Includes salary of commissioner at $60,000 per annum.*
Be it enacted by the Legislature of West Virginia:

That the total appropriations from the State Road Fund to the West Virginia Department of Transportation, Division of Motor Vehicles, Account No. 6710, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, be supplemented, amended and thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 3. Appropriations from Other Funds.

3 Section 4. Appropriations of Federal Funds.

4 126—Division of Motor Vehicles

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

6 Acct. No. 6710

7 TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th></th>
<th>Federal Funds Fiscal Year 1989-1990</th>
<th>Other Funds Fiscal Year 1989-1990</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$</td>
<td>$ 2,371,460</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$</td>
<td>46,312</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$</td>
<td>651,208</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$100,000</td>
<td>3,762,613</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$ 100,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and amend the unclassified item in the aforesaid account for expenditure in the fiscal year of 1989-1990 to be used for the development of a classified drivers license computer system, and to reflect the new total spending authority of the spending unit for such fiscal year. Such increased amount shall be available for expenditure upon the effective date of this bill.
CHAPTER 20

(Com. Sub. for H. B. 4456—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed March 10, 1990; in effect from passage. Became law without signature of the Governor.]

AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts of Account Number 6710-88, Department of Motor Vehicles—Highway Litter Control Fund; Account Number 6735-80, Division of Highways—Salvage Yard Fees; Account Number 6740-80, Division of Highways—Outdoor Advertising Control—Fees; Account Number 8000-99, Abandoned and Unclaimed Property—Trust and Expense Fund—Cash Control; Account Number 8001-10, Rewrite—Old—Lost Checks; Account Number 8010-99, Real Estate Commission—License Fees—Cash Control; Account Number 8016-99, Insurance Commission—Unclassified—Cash Control; Account Number 8017-20, Fire Commission—Fire Marshal Fees; Account Number 8080-99, Racing Commission—Medical Expenses and Transfers—Cash Control; Account Number 8101-10, Board of Architects; Account Number 8102-15, Board of Dental Examiners; Account Number 8105-30, Board of Pharmacy; Account Number 8106-35, Board of Practical Nurses; Account Number 8107-40, Board of Professional Engineers; Account Number 8109-50, Board of Osteopathy; Account Number 8110-55, Board of Registered Nurses; Account Number 8111-60, Board of Veterinarians; Account Number 8121-06, Social Security Contributions; Account Number 8140-99, Finance and Administration—Revolving Fund—Purchasing Division—Cash Control; Account Number 8148-26, C & P Refunds; Account Number 8151-99, Finance and Administration—Revolving Fund—Information System Services Division—Cash Control; Account Number 8180-99, Department of Agriculture—Operating Account—Cash Control; Account Number 8190-13, West Virginia Rural Rehabilitation Program; Account Number 8212-10, Criminal Law Research Center; Account Number 8215-18, Laboratory Services; Account Number 8215-19, Hepatitis B Vaccine; Account Number
8215-25, Medical Licensing Board; Account Number 8216-15, Vital Statistics Account; Account Number 8216-18, Planning—Health Care Cost Review Authority; Account Number 8216-19, Health Facility Licensing; Account Number 8220-99, Barbers and Beauticians—Cash Control; Account Number 8245-07, Department of Education—FFA—FHA—Conference Center, Board and Room; Account Number 8250-08, Interest on Employers Delinquent Contributions; Account Number 8260-11, Veterans Fund; Account Number 8260-13, Resident Maintenance Collections; Account Number 8280-99, Public Service Commission—Special License Fees—Cash Control; Account Number 8285-99, Gas Pipeline Safety Fund—Cash Control; Account Number 8290-99, Public Service Commission—Motor Carrier Division—Cash Control; Account Number 8311-31, Solid Waste Reclamation and Environmental Response Fund; Account Number 8311-32, Solid Waste Enforcement Fund; Account Number 8325-62, Highway Litter Control Fund; Account Number 8330-99, West Virginia Hospital Finance Authority—Cash Control; Account Number 8350-99, Motor Vehicle Inspection Fund—Cash Control; Account Number 8352-12, Division of Public Safety—Barracks Construction—Purchase of Investment; Account Number 8352-99, Construction and Repairs to State Police Buildings and Barracks—Cash Control; Account Number 8380-24, Board of Social Work Examiners—Operating Account; Account Number 8392-06, West Virginia Lending and Credit Rate Board Revolving Fund; Account Number 8395-99, Division of Banking—Assessment and Examination Fund—Cash Control; Account Number 8421-05, Division of Motor Vehicles—Motorboat Registration Fees; Account Number 8421-07, Division of Motor Vehicles—Hearing Fees; Account Number 8421-08, Division of Motor Vehicles—Returned Check Fees; Account Number 8421-09, Division of Motor Vehicles—Insurance Certificate Fees; Account Number 8421-10, Division of Motor Vehicles—Driver License Suspend/Revoke Fees; Account Number 8421-11, Division of Motor Vehicles—Driver Rehabilitation; Account Number 8460-10, Solid Waste Planning Fund; Account Number 8477-24,
WHEREAS, Due to the increased costs of providing services by the Division of Human Services of the Department of Health and Human Resources, the current appropriation has proven insufficient; and

WHEREAS, The Legislature has determined that this situation must be immediately addressed and responded to by means of prompt enactment of this supplementary appropriation bill, the single work object and purpose of which, pursuant to the provisions of Article VI, Section 51, C (7) (a) of the State Constitution, is to provide an appropriation of public moneys to such agency by budgetary action which expires certain nonoperational moneys now contained in special revenue funds or accounts of the state and to appropriate and transfer the total of such expired moneys to general revenue unappropriated surplus from which appropriations are to be made as specified herein; therefore

Be it enacted by the Legislature of West Virginia:

That the amounts hereinafter specified, in the special revenue funds and accounts, designated herein and appropriated by chapter ten, acts of the Legislature, regular session,
one thousand nine hundred eighty-nine, known as the budget bill, be supplemented, amended, reduced and caused to expire on or before the thirtieth day of June, one thousand nine hundred ninety, and that the total amount of expirations hereinafter specified be transferred to the general revenue unappropriated surplus: The sum of six hundred thousand dollars from Account Number 6710-88, Department of Motor Vehicles—Highway Litter Control Fund; the sum of eighty thousand dollars from Account Number 6735-80, Division of Highways—Salvage Yard Fees; the sum of forty thousand dollars from Account Number 6740-80, Division of Highways—Outdoor Advertising Control—Fees; the sum of four hundred thousand dollars from Account Number 8000-99, Abandoned and Unclaimed Property—Trust and Expense Fund—Cash Control; the sum of six hundred thousand dollars from Account Number 8001-10, Rewrite—Old—Lost Checks; the sum of four hundred thousand dollars from Account Number 8010-99, Real Estate Commission—License Fees—Cash Control; the sum of one million six hundred thousand dollars from Account Number 8016-99, Insurance Commission—Unclassified—Cash Control; the sum of one hundred twenty-one thousand dollars from Account Number 8017-20, Fire Commission—Fire Marshal Fees; the sum of seventy-five thousand dollars from Account Number 8080-99—Racing Commission—Medical Expenses and Transfers—Cash Control; the sum of fifteen thousand dollars from Account Number 8101-10, Board of Architects; the sum of thirty thousand dollars from Account Number 8102-15, Board of Dental Examiners; the sum of four hundred thousand dollars from Account Number 8105-30, Board of Pharmacy; the sum of seventy-five thousand dollars from Account Number 8106-35, Board of Practical Nurses; the sum of fifty thousand dollars from Account Number 8107-40, Board of Professional Engineers; the sum of two hundred fifty thousand dollars from Account Number 8109-50, Board of Osteopathy; the sum of one hundred fifty thousand dollars from Account Number 8110-55, Board of Registered Nurses; the sum of ten thousand dollars from Account Number 8111-60, Board of Veterinarians; the sum of two million five hundred seventy thousand dollars from Account Number 8121-06, Social Security Contributions; the sum of seventy-five thousand dollars from Account Number 8140-99, Finance and Administration—
Revolving Fund—Purchasing Division—Cash Control; the sum of one hundred forty-four thousand dollars from Account Number 8148-26, C & P Refunds; the sum of two hundred fifty thousand dollars from Account Number 8151-99, Finance and Administration—Revolving Fund—Information System Services Division—Cash Control; the sum of two hundred fifty thousand dollars from Account Number 8180-99, Department of Agriculture—Operating Account—Cash Control; the sum of two hundred thousand dollars from Account Number 8190-13, West Virginia Rural Rehabilitation Program; the sum of forty thousand dollars from Account Number 8212-10, Criminal Law Research Center; the sum of one hundred fifty thousand dollars from Account Number 8215-18, Laboratory Services; the sum of ten thousand dollars from Account Number 8215-19, Hepatitis B Vaccine; the sum of six hundred thousand dollars from Account Number 8215-25, Medical Licensing Board; the sum of one hundred thousand dollars from Account Number 8216-15, Vital Statistics Account; the sum of one hundred fifty thousand dollars from Account Number 8216-18, Planning—Health Care Cost Review Authority; the sum of one hundred thousand dollars from Account Number 8216-19, Health Facilities Licensing; the sum of one hundred thousand dollars from Account Number 8220-99, Barbers and Beauticians—Cash Control; the sum of seventy thousand dollars from Account Number 8245-07, Department of Education—FFA—FHA—Conference Center—Board and Room; the sum of seven hundred seventy-four thousand dollars from Account Number 8250-08, Interest on Employers Delinquent Contributions; the sum of two hundred fifty thousand dollars from Account Number 8260-11, Veterans Fund; the sum of two hundred fifty thousand dollars from Account Number 8260-13, Resident Maintenance Collections; the sum of two million five hundred thousand dollars from Account Number 8280-99, Public Service Commission—Special License Fees—Cash Control; the sum of fifty thousand dollars from Account Number 8285-99, Gas Pipeline Safety Fund—Cash Control; the sum of five hundred thousand dollars from Account Number 8290-99, Public Service Commission—Motor Carrier Division—Cash Control; the sum of seven hundred seventy-five thousand dollars from Account Number 8311-31, Solid Waste Reclamation and Environmental Response Fund; the sum of two hundred thousand dollars from Account Number 8311-32,
Solid Waste Enforcement Fund; the sum of fifty thousand dollars from Account Number 8330-99, West Virginia Hospital Finance Authority—Cash Control; the sum of fifty thousand dollars from Account Number 8350-99, Motor Vehicle Inspection Fund—Cash Control; the sum of two hundred thousand dollars from Account Number 8352-12, Division of Public Safety—Barracks Construction—Purchase of Investment; the sum of one hundred thousand dollars from Account Number 8352-99, Construction and Repairs to State Police Buildings and Barracks—Cash Control; the sum of fifty thousand dollars from Account Number 8380-24, Board of Social Work Examiners—Operating Account; the sum of seventy-five thousand dollars from Account Number 8392-06, West Virginia Lending and Credit Rate Board Revolving Fund; the sum of three hundred thousand dollars from Account Number 8395-99, Division of Banking—Assessment and Examination Fund—Cash Control; the sum of one hundred seventy-five thousand dollars from Account Number 8421-05, Division of Motor Vehicles—Motorboat Registration Fees; the sum of one hundred thousand dollars from Account Number 8421-07, Division of Motor Vehicles—Hearing Fees; the sum of fifty thousand dollars from Account Number 8421-08, Division of Motor Vehicles—Returned Check Fees; the sum of two hundred thousand dollars from Account Number 8421-09, Division of Motor Vehicles—Insurance Certificate Fees; the sum of one hundred thousand dollars from Account Number 8421-10, Division of Motor Vehicles—Driver License Suspend/Revoke Fees; the sum of two hundred thousand dollars from Account Number 8421-11, Division of Motor Vehicles—Driver Rehabilitation; the sum of four hundred fifty thousand dollars from Account Number 8460-10, Solid Waste Planning Fund; the sum of twenty-five thousand dollars from Account Number 8477-24, Forestry Fund; the sum of one hundred fifty thousand dollars from Account Number 8536-14, Energy—Oil and Gas Reclamation Trust; the sum of fifty-one thousand dollars from Account Number 8536-26, Energy—Test Fees; the sum of five hundred thousand dollars from Account Number 8564-99, Health Care Cost Review Authority—Cash Control; the sum of six hundred fifty thousand dollars from Account Number 8591-06, Wine License Special Fund; and the
of five hundred thousand dollars from Account Number 9270-99, Alcohol Beverage Control Commission—General Administration—Cash Control. Further, that the twenty million six hundred fifty thousand dollars expired from the above stated special revenue accounts and funds shall be appropriated to the accounts indicated below in the following amounts: The sum of two hundred forty-five thousand one hundred seventeen dollars to Account Number 9150-00, Personal Services; the sum of two million fifty-three thousand twenty-nine dollars to Account Number 9150-35, Employee Benefits; the sum of three million five hundred nine thousand dollars to Account Number 9155-04, Public Assistance; the sum of seven million three hundred thousand dollars to Account Number 9155-10, Social Services; the sum of one hundred one thousand dollars to Account Number 9150-06, Emergency Assistance; the sum of three hundred thousand dollars to Account Number 9155-59, Work and Training Payments; the sum of three million one hundred eighty thousand dollars to Account Number 9155-67, Medical Services; and the sum of two million seven hundred seventy-one thousand eight hundred fifty-four dollars to Account Number 9150-01, Current Expenses.

The purpose of this supplementary appropriation bill is to supplement, reduce and cause to expire nineteen million four hundred sixty thousand dollars from various special revenue funds and accounts, and to transfer such funds into specified accounts in the Division of Human Services, of the Department of Health and Human Resources, with such funds being available for expenditure on or before the thirtieth day of June, one thousand nine hundred ninety.

CHAPTER 21
(H. B. 4670—By Delegate Farley)

[Passed March 16, 1990; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of special revenue funds out of the treasury from the balance of all special revenue funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety, to the Division of Finance and Administration-Information System Services Division Fund,
Account No. 8151, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 8151, chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.
2 Section 3. Appropriations from other funds.
3 DEPARTMENT OF ADMINISTRATION
4 101—Division of Finance and Administration—
5 Information System Services Division Fund
6 (WV Code Chapter 5A)
7 Account No. 8151
8 4 Unclassified ............................... $840,295
9 The purpose of this supplementary appropriation bill is to supplement this account in the budget bill for fiscal year 1989-90 by adding to this existing line item an amount to be used to fund procurement of goods and services previously paid for through merchandise for resale. The amount, as itemized for expenditure during the fiscal year one thousand nine hundred ninety, shall be made available for expenditure upon the effective date of this bill.

CHAPTER 22
(H. B. 4227—By Delegates M. Burke and Minard)

[Passed March 1, 1990; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of special revenue funds supplementing chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.
Be it enacted by the Legislature of West Virginia:

That account No. 8355-99, chapter ten, acts of the Legislature, regular session, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 DEPARTMENT OF PUBLIC SAFETY
4 Division of Public Safety—
5 Drunk Driving Prevention Fund
6 (WV Code Chapter 15)
7 Acct. No. 8355
8 TO BE PAID FROM SPECIAL REVENUE FUND
9 Unclassified—Total........... $ 1,392,000
10 The purpose of this supplementary appropriation bill is to supplement this account in the budget bill for fiscal year 1989-1990, by adding to this line item an additional appropriation of seven hundred fifty thousand dollars which may be used by the department of public safety for personal services, employee benefits and unclassified expenditures as provided in section sixteen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

CHAPTER 23
(H. B. 4595—By Delegate Farley, By Request)

[Passed March 1, 1990; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all special revenue funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety, to the Division of Health-Hospital Services Revenue Account, Account No. 8500, supplementing
chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriation from the special revenue fund to the Division of Health-Hospital Services Revenue Account, Account No. 8500, for the fiscal year ending June thirtieth, one thousand nine hundred ninety, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred eighty-nine, known as the budget bill, be supplemented, amended and thereafter read as follows:

1

TITLE II—APPROPRIATIONS. 

Section 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

115—Division of Health Hospital Services Revenue Account (Special Fund)

(Capital Improvement, Renovation and Operation)

(WV Code Chapter 16)

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

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Unclassified .......................... $—0—
Debt Service ............................ 2,200,000
Institutional Facilities
Operations .............................. 19,700,000
Medley Placement ...................... 4,600,000
Total .................................. $26,500,000

The purpose of this supplementary appropriation bill is to supplement and amend the existing items in the aforesaid account for expenditure in fiscal year 1989-90 and to reflect the new total spending authority of the spending unit for such fiscal year. Such increased amounts shall be available for expenditure upon the effective date of this bill.
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 five-g, relating to the procurement of architect-engineer services by agencies of the state and its political subdivisions; providing declaration of policy and definitions; providing procedure for selection and procurement of architectural and engineering services.

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 five-g, to read as follows:

CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.

§5G-1-1. Declaration of legislative policy.

§5G-1-2. Definitions.

§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost two hundred fifty thousand dollars or more.

§5G-1-4. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost less than two hundred fifty thousand dollars.

§5G-1-1. Declaration of legislative policy.

The Legislature hereby declares it to be the policy of the state, and its political subdivisions, to procure architectural or engineering services or both on the basis of demonstrated competence and qualification for the type of professional services required.

§5G-1-2. Definitions.

As used in this section:
(a) The term "agency" means all state departments, agencies, authorities, quasi-public corporations and all political subdivisions, including cities, counties, boards of education and public service districts.

(b) The term "architectural and engineering services" includes those professional services of an architectural or engineering nature as well as incidental services that members of those professions and those in their employ may logically or justifiably perform.

(c) The term "director of purchasing" means any individual assigned by any agency to procure the services of architects and engineers.

(d) The term "firm" or "professional firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice the professions of architecture and engineering.

§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost two hundred fifty thousand dollars or more.

In the procurement of architectural and engineering services for projects estimated to cost two hundred fifty thousand dollars or more, the director of purchasing shall encourage such firms engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications and performance data, and may include anticipated concepts and proposed methods of approach to the project. All such jobs shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. A committee of three to five representatives of the agency initiating the request shall evaluate the statements of qualifications and performance data and other material submitted by interested firms and select a minimum of three firms which, in their opinion, are best qualified to perform the desired service. Interviews with each firm selected shall be conducted and the committee shall conduct discussions
20 regarding anticipated concepts and proposed methods of
21 approach to the assignment. The committee shall then
22 rank, in order of preference, no less than three profes-
23 sional firms deemed to be the most highly qualified to
24 provide the services required, and shall commence scope
25 of service and price negotiations with the highest
26 qualified professional firm for architectural or engineer-
27 ing services or both. Should the agency be unable to
28 negotiate a satisfactory contract with the professional
29 firm considered to be the most qualified, at a fee
determined to be fair and reasonable, price negotiations
31 with the firm of second choice shall commence. Failing
32 accord with the second most qualified professional firm,
33 the committee shall undertake price negotiations with
34 the third most qualified professional firm. Should the
35 agency be unable to negotiate a satisfactory contract
36 with any of the selected professional firms, it shall select
37 additional professional firms in order of their compe-
38 tence and qualifications and it shall continue negotia-
39 tions in accordance with this section until an agreement
40 is reached.

§5G-1-4. Contracts for architectural and engineering
services; selection process where total project
costs are estimated to cost less than two
hundred fifty thousand dollars.

1 In the procurement of architectural and engineering
2 services for projects estimated to cost less than two
3 hundred fifty thousand dollars, competition shall be
4 sought by the agency. The agency shall conduct discus-
5 sions with three or more professional firms solicited on
6 the basis of known or submitted qualifications for the
7 assignment prior to the awarding of any contract:
8 Provided, That if a judgment is made that special
9 circumstances exist and that seeking competition is not
10 practical, the agency may, with the prior approval of the
11 director of purchasing, select a firm on the basis of
12 previous satisfactory performance and knowledge of the
13 agency's facilities and needs. After selection, the agency
14 and firm shall develop the scope of services required and
15 negotiate a contract.
CHAPTER 25

(Com. Sub. for H. B. 4752—By Delegates Martin and Murphy)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one by adding thereto a new section, designated section six-b, all relating to requiring and providing for the issuance of permits by the director of the archives and history section of the division of culture and history for the excavation, removal, destruction, or other disturbance of historic or prehistoric ruins, burial grounds, archaeological or site, or human skeletal remains, unmarked grave, grave artifact or grave marker of archaeological significance; requiring such permits for the sale or exchange of such items; providing penalties for undertaking such activities without first obtaining such permits, for violating the terms and conditions of such permits and for withholding information regarding such prohibited activities; providing legislative findings on the need for such permits; providing process for notification of discovery of human skeletal remains in unmarked locations and subsequent disposition; providing concurrent civil penalties for persons convicted of prohibited acts involving the excavation, removal, destruction, disturbance and offering for sale or exchange of historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of archaeological significance and providing for disposition of proceeds when civil damages are recovered; providing for property tax exemption for property containing unmarked grave site; providing for disposition of certain human skeletal remains and grave artifacts not subject to reburial; providing general penalties for violation of section; changing the requirement that the historical magazine of the archives and history section be published quarterly; and changing certain references to conform
to Acts reorganizing the executive branch of state government.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-5. Archives and history section; director.

§29-1-6b. Protection of human skeletal remains; grave artifacts and grave markers; permits for excavation and removal; penalties.

§29-1-7. Protection of historic and prehistoric sites; penalties.

§29-1-5. Archives and history section; director.

(a) The purposes and duties of the archives and history division are to locate, survey, investigate, register, identify, excavate, preserve, protect, restore and recommend to the commissioner for acquisition historic, architectural, archaeological and cultural sites, structures, documents and objects worthy of preservation, including human skeletal remains, graves, grave artifacts and grave markers, relating to the state of West Virginia and the territory included therein from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation, restoration or development of such sites, structures, documents and objects; to direct, protect, excavate, preserve, study or develop such sites, structures and documents; to review all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state for the purposes of furthering the duties of the division; to carry out the duties and responsibilities enumerated in the National Historic
Preservation Act of 1966, as amended, as they pertain to the duties of the division; to develop and maintain a West Virginia state register of historic places for use as a planning tool for state and local government; to operate and maintain a state library for the preservation of all public records, state papers, documents and reports of all three branches of state government including all boards, commissions, departments and agencies as well as any other private or public papers, books or documents of peculiar or historic interest or significance; to preserve and protect all battle or regimental flags borne by West Virginians and other memorabilia of historic interest; to designate appropriate monuments, tablets or markers for historic, architectural and scenic sites within the state and to arrange for the purchase, replacement, care of and maintenance of such monuments, tablets and markers and to formulate and prepare suitable copy for them; to operate and maintain a state museum, and to coordinate activities with other museums in the state; to cooperate with state and federal agencies in archaeological work; to issue permits for the excavation or removal of human skeletal remains, grave artifacts and grave markers, archaeological, and prehistoric and historic features under the provisions of section six-b of this article; to edit and publish a quarterly an historical magazine devoted to the history, biography, bibliography and genealogy of West Virginia; and to perform such other duties as may be assigned to the section by the commissioner.

(b) With the advice and consent of the commission, in addition to the duties above set forth, the section shall determine the whereabouts of and require the return of furnishings, objects and documents missing from the capitol building and other state-owned or controlled buildings, including, but not limited to, furnishings chosen or purchased for the capitol by its architect, Cass Gilbert. No furnishings from the capitol may be sold or disposed of except under the direction of the director of surplus state property pursuant to section three-a, article eight, chapter five-a of this code. If furnishings originally designated as capitol building furnishings
have been sold or otherwise disposed of without the requisite sale procedures, such furnishings shall be returned to the capitol and, upon presentation of proof of the amount paid, the current owner shall be reim­bursed for the cost of the furnishing less any appropriate depreciation or wear and tear.

(c) With the advice and consent of the archives and history commission, the commissioner shall appoint a director of the archives and history section, who shall have: (1) A graduate degree in one of the social sciences, or equivalent training and experience in the fields of West Virginia history, history, historic preservation, archaeology, or in records, library or archives management; and (2) three years' experience in administration in the fields of West Virginia history, history, historic preservation, archaeology, or in records, library or archives management. Notwithstanding these qualifications, the person serving as the state historian and archivist on the date of enactment of this article shall be eligible for appointment as the director of the archives and history section. The director of the archives and history section shall serve as the state historian and archivist, and shall be the state historic preservation officer or a deputy state historic preservation officer.

(d) With the approval of the commissioner, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure with the minimum professional qualifications necessary to carry out the provisions of the National Historic Preservation Act of 1966, as amended. At the minimum, the following professions shall be represented within the section staff: Historian, architectural historian, a licensed architect who specializes in historical preservation, archaeologist specializing in historic and prehistoric archaeology, archivist, librarian and technical and clerical positions as are required.

(e) The director shall promulgate rules and regula­tions with the approval of the archives and history
commission and in accordance with the state administrative procedures act concerning: (1) The professional policies and functions of the archives and history section; (2) the review of, and, when required, issuance of permits for, all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state as indicated in subsection (a) of this section, in order to carry out the duties and responsibilities of the section; (3) the establishment and maintenance of a West Virginia state register of historic places, including the criteria for eligibility of buildings, structures, sites, districts and objects for the state register and procedures for nominations to the state register and protection of nominated and listed properties; (4) the review of historic structures in accordance with compliance alternatives and other provisions in any state fire regulation and shall coordinate standards with the appropriate regulatory officials regarding their application; (5) review of historic structures in conjunction with existing state or local building codes, and shall coordinate standards with the appropriate regulatory officials for their application; and (6) the expenditure of funds provided for threatened and endangered historic properties by the voluntary check-off program established under section fourteen, article one of this chapter and such other rules and regulations as may be deemed necessary to effectuate the purposes of this article.

§29-1-6b. Protection of human skeletal remains, grave artifacts and grave markers; permits for excavation and removal; penalties.

(a) Legislative findings and purpose.

The Legislature finds that there is a real and growing threat to the safety and sanctity of unmarked human graves in West Virginia and the existing laws of the state do not provide equal or adequate protection for all such graves. As evident by the numerous incidents in West Virginia which have resulted in the desecration of human remains and vandalism to grave markers, there is an immediate need to protect the graves of earlier West Virginians from such desecration. Therefore, the purpose of this article is to assure that all human burials
be accorded equal treatment and respect for human
dignity without reference to ethnic origins, cultural
backgrounds, or religious affiliations.

The Legislature also finds that those persons engaged
in the scientific study or recovery of artifacts which
have been acquired in accordance with the law are
engaged in legitimate and worthy scientific and educa-
tional activities. Therefore, this legislation is intended to
permit the appropriate pursuit of those lawful activities.

Finally, this legislation is not intended to interfere
with the normal activities of private property owners,
farmers, or those engaged in the development, mining
or improvement of real property.

(b) Definitions.

For the purposes of this section:

(1) “Human skeletal remains” means the bones, teeth,
hair or tissue of a deceased human body;

(2) “Unmarked grave” means any grave or location
where a human body or bodies have been buried or
deposited for at least fifty years and the grave or
location is not in a publicly or privately maintained
cemetery or in the care of a cemetery association, or is
located within such cemetery or in such care and is not
commonly marked;

(3) “Grave artifact” means any items of human
manufacture or use that are associated with the human
skeletal remains in a grave;

(4) “Grave marker” means any tomb, monument,
stone, ornament, mound, or other item of human
manufacture that is associated with a grave;

(5) “Person” includes the federal and state govern-
ments and any political subdivision of this state; and

(6) “Disturb” means the excavating, removing, expos-
ing, defacing, mutilating, destroying, molesting, or
desecrating in any way of human skeletal remains,
unmarked graves, grave artifacts or grave markers.

(c) Acts prohibited; penalties.
(1) No person may excavate, remove, destroy, or otherwise disturb any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance unless such person has a valid permit issued to him or her by the director of archives and history: Provided, That the supervising archaeologist of an archaeological investigation being undertaken in compliance with the federal Archaeological Resources Protection Act (Public Law 96-95 at 16 USC 470(aa)) and regulations promulgated thereunder shall not be required to obtain such permit, but shall notify the director of archives and history that such investigation is being undertaken and file reports as are required of persons issued a permit under this section: Provided, however, That projects being undertaken in compliance with section 106 of the National Historic Preservation Act of 1966, as amended, or subsection (a), section five of this article shall not be required to obtain such permit for excavation, removal, destruction or disturbance of historic or prehistoric ruins or archeological sites.

A person who, either by himself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs any historic or prehistoric ruins, burial grounds or archaeological site, or unmarked grave, grave artifact or grave marker of historical significance without first having been issued a valid permit by the director of archives and history, or who fails to comply with the terms and conditions of such permit, is guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars, and may be imprisoned in the county jail for not less than ten days nor more than six months or both fined and imprisoned.

A person who, either by himself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs human skeletal remains of historical significance without first having been issued a valid permit by the director of archives and history, or who fails to comply with the terms and conditions relating to
disinterment or displacement of human skeletal remains
of such permit, is guilty of the felony of disinterment
or displacement of a dead human body or parts thereof
under section fourteen, article eight, chapter sixty-one
of this code and, upon conviction, shall be confined in
the state penitentiary not less than two nor more than
five years.

A person who intentionally withholds information
about the excavation, removal, destruction, or other
disturbance of any historic or prehistoric ruins, burial
grounds, archaeological site, or human skeletal remains,
unmarked grave, grave artifact or grave marker of
historical significance is guilty of a misdemeanor and,
upon conviction, shall be fined not more than one
hundred dollars, and may be imprisoned in the county
county jail not more than ten days.

(2) No person may offer for sale or exchange any
human skeletal remains, grave artifact or grave marker
obtained in violation of this section.

A person who, either by himself or through an agent,
offers for sale or exchange any human skeletal remains,
grave artifact or grave marker obtained in violation of
this section is guilty of a misdemeanor and, upon
conviction, shall be fined not less than one thousand
doors nor more than five thousand dollars, and may be
imprisoned in the county jail not less than six months
nor more than one year.

(3) Each instance of excavation, removal, destruction,
disturbance or offering for sale or exchange under (1)
and (2) of this subsection shall constitute a separate
t offense.

(d) Notification of discovery of human skeletal remains
in unmarked locations.

Within forty-eight hours of the discovery of human
skeletal remains, grave artifact or grave marker in an
unmarked grave on any publicly or privately owned
property the person making such discovery shall notify
the county sheriff of the discovery and its location. If the
human remains, grave artifact or grave marker appear
to be from an unmarked grave, the sheriff shall
promptly, and prior to any further disturbance or
removal of the remains, notify the director of archives
and history. The director shall cause an on-site inspec-
tion of the disturbance to be made to determine the
potential for archaeological significance of the site:
Provided, That when the discovery is made by an
archaeological investigation permitted under state or
federal law, the supervising archaeologist shall notify
the director of archives and history directly.

If the director of archives and history determines that
the site has no archaeological significance, the removal,
transfer and disposition of the remains shall be subject
to the provisions of article thirteen, chapter thirty-seven
of this code, and the director shall notify the circuit
court of the county wherein the site is located.

If the director of archives and history determines that
the site has a potential for archaeological significance,
the director shall take such action as is reasonable,
necessary and prudent, including consultation with
appropriate private or public organizations, to preserve
and advance the culture of the state in accordance with
the powers and duties granted to the director, including
the issuance of a permit for the archaeological excava-
tion or removal of the remains. If the director deter-
mines that the issuance of a permit for the archaeolog-
ical excavation or removal of the remains is not
reasonable, necessary or prudent, the director shall
provide written reasons to the applicant for not issuing
the permit.

(e) Issuance of permits.

All permits issued by the director of archives and
history for the disturbance of human skeletal remains,
grave artifacts, or grave markers shall at a minimum
address the following conditions: (1) The methods by
which descendents of proven kinship to the deceased are
notified prior to the disturbance; (2) the respectful
manner in which the remains, artifacts or markers are
to be removed and handled; (3) the need for any
scientific analysis of the remains, artifacts or markers
and the duration of those studies; (4) the way in which
the remains may be reburied in consultation with any
descendants of proven kinship, when available; and (5)
such other conditions as the director may deem neces­
sary. Expenses accrued in meeting the permit condi­
tions shall be borne by the permit applicant, except in
cases where the deceasedes' descendents or sponsors are
willing to share or assume the costs. A permit to disturb
human skeletal remains, grave artifacts or grave
markers will be issued only after alternatives to
disturbance and other mitigative measures have been
considered.

In addition, a person applying for a permit to excavate
or remove human skeletal remains, grave artifacts,
grave markers, or any historic or prehistoric features of
archaeological significance must:

(1) Provide a detailed statement to the director of
archives and history giving the reasons and objectives
for excavation or removal and the benefits expected to
be obtained from the contemplated work;

(2) Provide data and results of any excavation, study
or collection in annual reports to the director of archives
and history and submit a final report to the director
upon completion of the excavation; and

(3) Obtain the prior written permission of the owner
if the site of such proposed excavation is on privately
owned land.

Such permits shall be issued for a period of two years
and may be renewed at expiration. The permits are not
transferable but other persons who have not been issued
a permit may work under the direct supervision of the
person holding the permit. The person or persons to
whom a permit was issued must carry the permit while
exercising the privileges granted and must be present
at the site whenever work is being done.

Notwithstanding any other penalties to which a
person may be subject under this section for failing to
comply with the terms and conditions of a permit, the
permit of a person who violates any of the provisions of
this subsection shall be revoked.
As permits are issued, the director of archives and history shall maintain a catalogue of unmarked grave locations throughout the state.

(f) Property tax exemption for unmarked grave sites.

To serve as an incentive for the protection of unmarked graves, the owner, having evidence of the presence of unmarked graves on his or her property, may apply to the director of archives and history for a determination as to whether such is the case. Upon making such a determination in the affirmative, the director of archives and history shall provide written certification to the landowner that the site containing the graves is a cemetery and as such is exempt from property taxation upon presentation of the certification to the county assessor. The area of the site to receive property tax exempt status shall be determined by the director of archives and history. Additionally, a property owner may establish protective easements for the location of unmarked graves.

(g) Additional provisions for enforcement; civil penalties; rewards for information.

(1) The prosecuting attorney of the county in which a violation of any provision of this section is alleged to have occurred may be requested by the director of archives and history to initiate criminal prosecutions or to seek civil damages, injunctive relief and any other appropriate relief. The director of archives and history shall cooperate with the prosecuting attorney in resolving such allegations.

(2) Persons convicted of any prohibited act involving the excavation, removal, destruction, disturbance or offering for sale or exchange of historic or prehistoric ruins, burial grounds, archaeological site, human skeletal remains, unmarked grave, grave artifact or grave marker under the provisions of subdivisions (1) and (2), subsection (c) of this section shall also be liable for civil damages to be assessed by the prosecuting attorney in consultation with the director of archives and history.
Civil damages may include:

(i) Forfeiture of any and all equipment used in disturbing the protected unmarked graves or grave markers;

(ii) any and all costs incurred in cleaning, restoring, analyzing, accessioning and curating the recovered material;

(iii) any and all costs associated with recovery of data, and analyzing, publishing, accessioning and curating materials when the prohibited activity is so extensive as to preclude the restoration of the unmarked burials or grave markers;

(iv) any and all costs associated with restoring the land to its original contour or the grave marker to its original condition;

(v) any and all costs associated with reinterment of the human skeletal remains; and

(vi) any and all costs associated with the determination and collection of the civil damages.

When civil damages are recovered, the proceeds, less the costs of the prosecuting attorney associated with the determination and collection of such damages, shall be deposited into the endangered historic properties fund created in section fourteen of this article and may be expended by the director of archives and history for archaeological programs at the state level, including the payment of rewards for information leading to the arrest and conviction of persons violating the provisions of subdivisions (1) and (2), subsection (c) of this section.

(3) The director of archives and history is authorized to offer and pay rewards of up to one thousand dollars from funds on deposit in the endangered historic properties fund for information leading to the arrest and conviction of persons who violate the provisions of subdivisions (1) and (2), subsection (c) of this section.

(h) Disposition of remains and artifacts not subject to reburial.
All human skeletal remains and grave artifacts found in unmarked graves on public or private land, and not subject to reburial, under the provisions of subsection (e) of this section, are held in trust for the people of West Virginia by the state and are under the jurisdiction of the director of archives and history. All materials collected and not reburied through this section shall be maintained with dignity and respect for the people of the state under the care of the West Virginia state museum.

§29-1-7. Protection of historic and prehistoric sites; penalties.

Historic and prehistoric landmarks, sites and districts, identified by the archives and history section, on lands owned or leased by the state, or on private lands where investigation and development rights have been acquired by the state by lease or contract, shall not be disturbed, or destroyed except as permitted under sections five and six-b of this article.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

CHAPTER 26

(S. B. 280—By Senators Humphreys, Whillow, Felton, Wehrle, Helmick, Wolfe, Pritt and Dittmar)

[Passed March 9, 1990: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to financial institutions; reporting of state assets held to secretary of administration and treasurer.

Be it enacted by the Legislature of West Virginia:
That article one, 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 nine, to read as follows:

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-9. Reporting of state assets held to secretary and state treasurer.

On or before the first day of July, one thousand nine hundred ninety, the secretary of administration shall, pursuant to chapter twenty-nine-a of this code, promulgate rules requiring any and all banks, savings and loans or other financial institutions in possession of property or other assets belonging to the state of West Virginia to report on at least an annual basis, to the secretary and state treasurer, the nature and value of said property.

CHAPTER 27
(S. B. 148—By Senator Thomas)

[Passed March 6, 1990: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the amount of bank assets permitted by code to qualify as a member of the board of banking and financial institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum;
meetings; when members disqualified from participation; compensation; records; office space; personnel.

(a) There is hereby created the West Virginia board of banking and financial institutions which shall consist of six members and the commissioner, who shall be chairman. The six members shall be appointed by the governor by and with the advice and consent of the senate. Three of the members shall be executive officers of state banking institutions, of whom one shall be truly representative of such state banking institutions having assets not greater than seventy-five million dollars, one shall be truly representative of such state banking institutions having total assets greater than seventy-five million dollars but not greater than two hundred million dollars, and one shall be truly representative of such banking institutions having total assets greater than two hundred million dollars. One member shall be an executive officer of a financial institution other than a banking institution. Two members shall represent the public, neither of whom shall be an employee, officer, trustee, director or stockholder of any financial institution. No member shall hold any other office, employment or position with the United States, any state, county, municipality or other governmental entity, any instrumentality or agency of any of the foregoing or with any political party.

(b) The members of the board shall be appointed for overlapping terms of six years, except that of the original appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term of four years and two members shall be appointed for a term of six years, and in every instance until their respective successors have been appointed and qualified. Any member appointed for a full six-year term may not be reappointed until two years after the expiration of such term. Any member appointed for less than a full six-year term shall be eligible for reappointment for a full term. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by Section 5, Article IV
of the constitution of the state of West Virginia. The governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating said office. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) A majority of the members of the board shall constitute a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he is, or was at any time in the preceding twelve months, a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself from participation in a proceeding for any other cause deemed by him to be sufficient. Each member shall receive fifty dollars for each day or portion thereof spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his duties as a member of the board.

(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available necessary office space and secretarial and other assistance as the board may reasonably require.

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 board of banking and financial institutions should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the West Virginia board
of banking and financial institutions shall continue to
exist until the first day of July, one thousand nine
hundred ninety-two.

CHAPTER 28
(Com. Sub. for H. B. 4803—By Delegate Phillips)
[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and seven, article eight-a of said chapter; and to amend and reenact section two, article one, chapter forty-seven-a of said code, all relating to banking institutions and services generally; acquisition of bank shares, state banks or holding companies by foreign banks; lending and credit rate board yearly fee; and incorporation of newly organized banks; and capitalization requirements of newly organized banks.

Be it enacted by the Legislature of West Virginia:

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

Chapter
31A. Banks and Banking.
47A. West Virginia Lending and Credit Rate Board.

CHAPTER 31A. BANKS AND BANKING.

Article
4. Banking Institutions and Services Generally.
8A. Acquisition of Bank Shares.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.
§31A-4-3. Minimum capital stock; one class of stock; par value; capitalization of surplus.

(a) No banking institution may hereafter be incorporated unless it shall have bona fide subscribed capital stock and capital surplus equal to at least one million dollars. The West Virginia board of banking and financial institutions shall require capital in excess of one million dollars if, in its judgment, economic conditions or the operating environment of the proposed banking institution, make such a requirement necessary.

(b) Notwithstanding any provision of (a) above, the commissioner or the West Virginia board of banking and financial institutions may approve the incorporation of a bank newly organized solely for the purpose of facilitating the acquisition of another bank if the proposed newly organized bank has a bona fide subscribed capital stock and capital surplus of at least sixty thousand dollars.

(c) Banking institutions shall issue but one class of stock and the shares shall have a nominal or par value of not less than one dollar nor more than one hundred dollars each, and as to each banking institution each share shall be equal in all respects with any other share.

(d) Any banking institution may change the par value of its shares, when and to the extent that any such action may be authorized in writing by the commissioner.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

§31A-8A-1. Legislative findings and purpose.
§31A-8A-7. Acquisition of state bank or holding company by foreign bank; reciprocity; authority of the commissioner and of the board.

§31A-8A-1. Legislative findings and purpose.

After a review of the structure of banking organizations in the state of West Virginia and after full consideration of the complex issues involved, the Legislature hereby finds and determines that:

(a) Well managed and financially sound banking institutions are essential to the financial well-being of
the citizens, and the promotion of the future economic
and industrial growth and development of this state;
(b) The formation of bank holding companies will
strengthen and supplement traditional banking services
and facilitate the development of the type of banking
institutions that are necessary for the economic and
industrial growth and development of this state;
(c) It is in the best interests of this state and its
citizens for the board to have the power and authority
to disapprove the acquisition of a bank by a bank
holding company when the board determines that such
acquisition would result in a monopoly, substantially
lessen competition, or be contrary to the best interests
of the shareholders or customers of the bank involved;
and
(d) The deposits of the citizens of this state are a
substantial and valuable resource which should serve
the economic and industrial growth and development
needs, and the consumer needs of the citizens of this
state; and since the board could not effectively make a
determination that the control of deposits of the citizens
of this state by bank holding companies, the principal
places of business of which are located outside this state,
would be used for the above enumerated local needs of
this state's citizenry, a bank holding company with its
principal place of business located outside this state
shall be prohibited from acquiring, directly or indi-
drectly, five percent or more of the interest in, or assets
of, any bank or bank holding company located in this
state, unless acquired pursuant to section seven of this
article.
§31A-8A-7. Acquisition of state bank or holding company
by foreign bank; reciprocity; authority of
the commissioner and of the board.
(a) Except as authorized in this section, no banking
institution incorporated under the laws of any other
state or having its principal place of business in any
other state may receive deposits or transact any banking
business of any kind in this state other than the lending
of money.
(b) Upon enactment, a bank holding company with its principal place of business in another state may establish electronic data processing facilities and credit card processing facilities in West Virginia.

(c) After the thirty-first day of December, one thousand nine hundred eighty-seven, a bank holding company with its principal place of business in another state may acquire a West Virginia bank or West Virginia bank holding company if the board determines in its discretion that the laws of such other state, as in effect at the time the application referred to in subsection (d) of this section, permits a West Virginia bank holding company to acquire a bank or bank holding company having its principal place of business in such other state on terms that are, on the whole, substantially no more restrictive than those established under this section and if the West Virginia bank has, or all West Virginia subsidiaries of the West Virginia bank holding company to be acquired have, been in operation for two years or more. The board may approve the acquisition of all or substantially all of the shares of a bank newly organized solely for the purpose of facilitating the acquisition of a bank that has been in existence and continuously operating for at least two years. If the law of such other state restricts entry by West Virginia bank holding companies to that state, then the board may similarly limit the authority granted by this section for bank holding companies with their principal places of business located in that state.

In no case may this section be construed to permit the merger, combination or consolidation of a West Virginia bank with or into a bank the principal place of business of which is not in this state.

(d) Any bank holding company proposing to acquire a West Virginia bank or West Virginia bank holding company pursuant to this section shall comply with, and be governed by, the procedures and requirements contained in section four of this article.

(e) No application for approval of an acquisition pursuant to the authority granted by this section may
be approved by the board if the board determines that such approval would cause the applicant bank holding company to control aggregate total deposits in this state exceeding twenty percent of the total deposits held by all financial institutions located in this state as reported in the most recently available reports of condition or similar reports filed with state or federal authorities.

(f) Unless the shareholders of the West Virginia bank or West Virginia bank holding company to be acquired have approved an amendment to its articles of incorporation or code of regulations or comparable document that provides that this subsection shall not apply to such West Virginia bank or West Virginia bank holding company, any acquisition to be made pursuant to the authority granted by this section which will result in the acquiring nonresident bank holding company directly or indirectly owning or controlling the West Virginia bank or West Virginia bank holding company must be authorized by the affirmative vote of the holders of not less than two thirds of the voting power of the West Virginia bank or West Virginia bank holding company to be acquired.

(g) Any bank holding company acquiring a bank or bank holding company pursuant to the authority granted by this section shall file with the commissioner copies of the public portions of all regular and periodic reports such bank holding company is required to file with federal regulators and under section 13 or 15(d) of the “Securities Exchange Act of 1934,” 48 STAT. 894, 15 U.S.C. 78m or 78o(d), as amended. These reports shall be filed with the commissioner within fifteen days following the date they are filed in final form with the applicable regulator.

(h) As used in this section:

(1) “Acquire” or “acquisition” means any of the following transactions or actions:

(A) A merger, consolidation or combination of, or with, a West Virginia bank holding company;

(B) The acquisition of the direct or indirect ownership
or control of voting shares of a West Virginia bank holding company or a West Virginia bank if, after such acquisition, the acquiring bank holding company will directly or indirectly own or control more than five percent of any class of voting shares of the West Virginia bank or West Virginia bank holding company unless the board determines, in its discretion, that the nature of the acquisition is such that it should not be subject to the limitations of this section;

(C) The direct or indirect acquisition of all or substantially all of the assets of a West Virginia bank or West Virginia bank holding company by a bank holding company; or

(D) The taking of any other action by a bank holding company that results in the direct or indirect control of a West Virginia bank or West Virginia bank holding company.

(2) "Bank holding company" means any company which is a bank holding company as defined in this article, or which will become such an approved bank holding company prior to or upon completion of the acquisition to be made pursuant to the authority granted by this section.

(3) "Electronic data processing facilities and credit card processing facilities" means facilities established only for the purpose of processing accounts and or processing transactions relating to the issuance of credit cards.

(4) "Principal place of business" means, as to a bank holding company, the state or jurisdiction in which the total deposits of all direct and indirect banking subsidiaries of the bank holding company and any other company that has control of the bank holding company are the largest, as shown in the most recent report of condition or similar report filed by such banking subsidiaries with state or federal authorities; and, as to a bank, the state or jurisdiction in which its total deposits and those of all its banking subsidiaries, if any, are the largest, as shown in the most recent report of condition or similar report filed by the bank and its banking subsidiaries with state or federal authorities.
(5) "West Virginia bank" means a bank incorporated under the laws of this state or a national banking association the principal place of business of which is in this state.

(6) "West Virginia bank holding company" means a bank holding company which owns or controls one or more West Virginia banks and has its principal place of business in this state.

(i) (1) When the commissioner of banking considers it necessary or appropriate, he may examine any bank holding company that has acquired or has an application pending to acquire a West Virginia bank or West Virginia bank holding company pursuant to the authority granted by subsection (c) of this section. The cost of an examination if in excess of the initial fee, shall be assessed against and paid by the bank holding company examined. The commissioner may request the bank holding company to be examined pursuant to this subsection to advance the estimated cost of such examination.

(2) The commissioner may enter into cooperative agreements with other state and federal bank regulatory authorities to facilitate the examination of any bank holding company that has acquired or has an application pending to acquire a West Virginia bank or West Virginia bank holding company pursuant to the authority granted by subsection (c) of this section. The commissioner may accept reports of examinations and other records from such other authorities in lieu of conducting his own examination of such bank holding companies. The commissioner may take any action jointly with other regulatory agencies having concurrent jurisdiction over such bank holding companies or may take action independently in order to carry out his responsibilities under subsection (c) of this section.

(3) When the commissioner considers it necessary, he may require any bank holding company that has acquired a West Virginia bank or West Virginia bank holding company pursuant to the authority granted by subsection (c) of this section to submit such reports to
the commissioner as he determines to be necessary or appropriate for the purpose of carrying out his responsibilities.

CHAPTER 47A. WEST VIRGINIA LENDING AND CREDIT RATE BOARD.

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-2. Board staff, offices, funding.

Under the direction of the chairperson of the board, the board shall be entitled to utilize the staff of the West Virginia banking department and the offices of the board shall be those of the West Virginia banking department. In order to defray the cost of the board’s operations including the cost of its utilization of the staff of the West Virginia banking department, the board shall establish the West Virginia lending and credit rate board revolving fund.

On or before the first day of July of each year, the commissioner of banking may charge and collect from each supervised financial organization and supervised lender a yearly fee of fifty dollars and pay it into the revolving fund established by the board. The fees paid into this revolving fund shall be utilized to pay the costs and expenses of the board and all incidental costs and expenses necessary for its operations.

CHAPTER 29

(Com. Sub. for S. B. 355—By Senator Thomas)

[Passed March 9, 1990: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-four, relating to financial institutions revealing to other financial institutions information concerning employee's or former employee's participation in violation of banking laws.
Be it enacted by the Legislature of West Virginia:

That article four, chapter thirty-one-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 forty-four, to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-44. Employment information.

1. It is not unlawful for any officer of a financial institution, as that term is defined in section two, article one, chapter thirty-one-a of this code, to provide employment information about an employee or former employee to another financial institution when that information is limited to the employee’s, or former employee’s, active participation in a violation of any state or federal statute, rule or regulation related to financial institutions and which has been duly reported to the proper state or federal prosecutorial authorities.

CHAPTER 30

(S. B. 138—By Senators Dittmar and Heck)

[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating to payment order; funds transfer; other definitions; time payment order received; federal reserve regulations and operating circulars; exclusion of consumer transactions; security procedures; authorized and verified payment orders; unenforceability of certain verified payment orders; refund of payment; erroneous payment orders; transmission of payment; misdescription of beneficiary; misdescription of intermediary bank or beneficiary’s bank; acceptance of payment order; rejection of payment order; cancellation and amendment of payment order; liability and duty of receiving bank;
execution; obligations of receiving bank; erroneous execution; duty of sender; liability for late or improper execution; payment date; obligation of sender; payment by sender; obligation of beneficiary’s bank; payment of beneficiary’s bank; payment by originator; discharge of underlying obligation; variation by agreement; creditor process; setoff by beneficiary’s bank; injunction or restraining order; order items may be charged; preclusion of objection to debt; rate of interest; and choice of law.

Be it enacted by the Legislature of West Virginia:

That chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four-a, to read as follows:

ARTICLE 4A. FUNDS TRANSFERS.

PART I. SUBJECT MATTER AND DEFINITIONS.

§46-4A-101. Short Title.
§46-4A-102. Subject matter.
§46-4A-103. Payment order—Definitions.
§46-4A-104. Funds transfer—Definitions.
§46-4A-105. Other definitions.
§46-4A-106. Time payment order is received.
§46-4A-107. Federal reserve regulations and operating circulars.
§46-4A-108. Exclusion of consumer transactions governed by federal law.

PART II. ISSUE AND ACCEPTANCE OF PAYMENT ORDER.

§46-4A-203. Unenforceability of certain verified payment orders.
§46-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.
§46-4A-205. Erroneous payment orders.
§46-4A-206. Transmission of payment order through funds-transfer or other communication system.
§46-4A-207. Misdescription of beneficiary.
§46-4A-208. Misdescription of intermediary bank or beneficiary’s bank.
§46-4A-209. Acceptance of payment order.
§46-4A-211. Cancellation and amendment of payment order.
§46-4A-212. Liability and duty of receiving bank regarding unaccepted payment order.
PART III. EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK.

§46-4A-301. Execution and execution date.
§46-4A-302. Obligations of receiving bank in execution of payment order.
§46-4A-303. Erroneous execution of payment order.
§46-4A-304. Duty of sender to report erroneously executed payment order.
§46-4A-305. Liability for late or improper execution of failure to execute payment order.

PART IV. PAYMENT.

§46-4A-401. Payment date.
§46-4A-402. Obligation of sender to pay receiving bank.
§46-4A-403. Payment by sender to receiving bank.
§46-4A-404. Obligation of beneficiary's bank to pay and give notice to beneficiary.
§46-4A-405. Payment by beneficiary's bank to beneficiary.
§46-4A-406. Payment by originator to beneficiary; discharge of underlying obligation.

PART V. MISCELLANEOUS PROVISIONS.

§46-4A-501. Variation by agreement and effect of funds-transfer system rule.
§46-4A-502. Creditor process served on receiving bank; setoff by beneficiary's bank.
§46-4A-503. Injunction or restraining order with respect to funds transfer.
§46-4A-504. Order in which items and payment orders may be charged to account; order of withdrawals from accounts.
§46-4A-505. Preclusion of objection to debit of customer's account.
§46-4A-506. Rate of interest.

PART I. SUBJECT MATTER AND DEFINITIONS.


1 This article may be cited as Uniform Commercial Code-Funds Transfer.

§46-4A-102. Subject matter.

1 Except as otherwise provided in section one hundred eight of this article, this article applies to funds transfers defined in section one hundred four of this article.

§46-4A-103. Payment order—Definitions.

1 (a) In this article:

2 (1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically or in writing, to pay, or to cause another bank to pay, a
fixed or determinable amount of money to a beneficiary if:

(A) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(B) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(C) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system or communication system for transmission to the receiving bank.

(2) "Beneficiary" means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subdivision (1), subsection (a) of this section is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

§46-4A-104. Funds transfer—Definitions.

In this article:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's
bank of a payment order for the benefit of the benefici- 

cyary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank 
other than the originator's bank or the beneficiary's 
bank.

(3) "Originator" means the sender of the first payment 
order in a funds transfer.

(4) "Originator's bank" means (A) the receiving bank 
to which the payment order of the originator is issued 
if the originator is not a bank or (B) the originator if 
the originator is a bank.

§46-4A-105. Other definitions.

(a) In this article:

(1) "Authorized account" means a deposit account of 
a customer in a bank designated by the customer as a 
source of payment of payment orders issued by the 
customer to the bank. If a customer does not so 
designate an account, any account of the customer is an 
authorized account if payment of a payment order from 
that account is not inconsistent with a restriction on the 
use of that account.

(2) "Banker" means a person engaged in the business 
of banking and includes a savings bank, savings and 
loan association, credit union, and trust company. A 
branch or separate office of a bank is a separate bank 
for purposes of this article.

(3) "Customer" means a person, including a bank, 
having an account with a bank or from whom a bank 
has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank 
means the part of a day during which the receiving 
bank is open for the receipt, processing and transmittal 
of payment orders and cancellations and amendments of 
payment orders.

(5) "Funds-transfer system" means a wire transfer 
network, automated clearing house or other communica- 
tion system of a clearing house or other association of
banks through which a payment order by a bank may
be transmitted to the bank to which the order is
addressed.

(6) "Good faith" means honesty in fact and the
observance of reasonable commercial standards of fair
dealing.

(7) "Prove" with respect to a fact means to meet the
burden of establishing the fact as defined in subdivision
(8), section two hundred one, article one of this chapter.

(b) Other definitions applying to this article and the
sections in which they appear are:

(1) "Acceptance", section two hundred nine of this
article.

(2) "Beneficiary", section one hundred three of this
article.

(3) "Beneficiary's bank", section one hundred three of
this article.

(4) "Executed", section three hundred one of this
article.

(5) "Execution date", section three hundred one of this
article.

(6) "Funds transfer", section one hundred four of this
article.

(7) "Funds-transfer system rule", section five hundred
one of this article.

(8) "Intermediary bank", section one hundred four of
this article.

(9) "Originator", section one hundred four of this
article.

(10) "Originator's bank", section one hundred four of
this article.

(11) "Payment by beneficiary's bank to beneficiary", section
four hundred five of this article.

(12) "Payment by originator to beneficiary", section
four hundred six of this article.
(13) “Payment by sender to receiving bank”, section four hundred three of this article.

(14) “Payment date”, section four hundred one of this article.

(15) “Payment order”, section one hundred three of this article.

(16) “Receiving bank”, section one hundred three of this article.

(17) “Security procedure”, section two hundred one of this article.

(18) “Sender”, section one hundred three of this article.

(c) The following definitions in article four of this chapter apply to this article:

(1) “Clearing house”, section one hundred four, article four of this chapter.

(2) “Item”, section one hundred four, article four of this chapter.

(3) “Suspends payments”, section one hundred four, article four of this chapter.

(d) In addition, article one of this chapter contains general definitions and principles of construction and interpretation applicable throughout this article.

§46-4A-106. Time payment order is received.

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in subdivision (27), section two hundred one, article one of this chapter. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations or amendments, or to different categories of payment orders, cancellations or amendments. A cut-off time may apply to senders generally or different cut-
off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article.

§46-4A-107. Federal reserve regulations and operating circulars.

Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this article to the extent of the inconsistency.

§46-4A-108. Exclusion of consumer transactions governed by federal law.

This article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. §1693 et seq.) as amended from time to time.

PART II. ISSUE AND ACCEPTANCE OF PAYMENT ORDER.


"Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (1) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (2) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures or similar
security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.


(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (1) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (2) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (1) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that
customer, and (2) the customer expressly agreed in
writing to be bound by any payment order, whether or
not authorized, issued in its name, and accepted by the
bank in compliance with the security procedure chosen
by the customer.

(d) The term "sender" in this article includes the
customer in whose name a payment order is issued if
the order is the authorized order of the customer under
subsection (a) of this section, or it is effective as the
order of the customer under subsection (b) of this
section.

(e) This section applies to amendments and cancella-
tions of payment orders to the same extent it applies to
payment orders.

(f) Except as provided in this section and in subdivi-
sion (1), subsection (a), section two hundred three of this
article, rights and obligations arising under this section
or section two hundred three of this article may not be
varied by agreement.

§46-4A-203. Unenforceability of certain verified pay-
ment orders.

(a) If an accepted payment order is not, under
subsection (a), section two hundred two of this article,
an authorized order of a customer identified as sender,
but is effective as an order of the customer pursuant to
subsection (b), section two hundred two of this article,
the following rules apply:

(1) By express written agreement, the receiving bank
may limit the extent to which it is entitled to enforce
or retain payment of the payment order; or

(2) The receiving bank is not entitled to enforce or
retain payment of the payment order if the customer
proves that the order was not caused, directly or
indirectly, by a person (A) entrusted at any time with
duties to act for the customer with respect to payment
orders or the security procedure, or (B) who obtained
access to transmitting facilities of the customer or who
obtained, from a source controlled by the customer and
without authority of the receiving bank, information
facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

§46-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (1) not authorized and not effective as the order of the customer under section two hundred two of this article or (2) not enforceable, in whole or in part, against the customer under section two hundred three of this article, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment, and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) of this section may be fixed by agreement as stated in subsection (1), section two hundred four, article one of this chapter, but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement.

§46-4A-205. Erroneous payment orders.

(a) (1) If an accepted payment order was transmitted
pursuant to a security procedure for the detection of error and the payment order (A) erroneously instructed payment to a beneficiary not intended by the sender, (B) erroneously instructed payment in an amount greater than the amount intended by the sender, or (C) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(2) If the sender proves that the sender or a person acting on behalf of the sender pursuant to section two hundred six of this article complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in subdivisions (3) and (4) of this subsection;

(3) If the funds transfer is completed on the basis of an erroneous payment order described in paragraph (A) or (C) of subdivision (1), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution; or

(4) If the funds transfer is completed on the basis of a payment order described in paragraph (B) of subdivision (1), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (1) the sender of an erroneous payment order described in subdivision (1) of subsection (a) is not obliged to pay all or part of the order, and (2) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender’s account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time not exceeding ninety days after the bank’s notification was
received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

§46-4A-206. Transmission of payment order through funds-transfer or other communication system.

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

§46-4A-207. Misdescription of beneficiary.

(a) Subject to subsection (b) of this section, if, in a payment order received by the beneficiary's bank, the name, bank account number or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c) of
this section, if the beneficiary's bank does not know that
the name and number refer to different persons, it may
rely on the number as the proper identification of the
beneficiary of the order. The beneficiary's bank need not
determine whether the name and number refer to the
same person; or

(2) If the beneficiary's bank pays the person identified
by name or knows that the name and number identify
different persons, no person has rights as beneficiary
except the person paid by the beneficiary's bank if that
person was entitled to receive payment from the
originator of the funds transfer. If no person has rights
as beneficiary, acceptance of the order cannot occur.

(c) If a payment order described in subsection (b) of
this section is accepted, the originator's payment order
described the beneficiary inconsistently by name and
number, and the beneficiary's bank pays the person
identified by number as permitted by subdivision (1),
subsection (b) of this section, the following rules apply:

(1) If the originator is a bank, the originator is obliged
to pay its order; or

(2) If the originator is not a bank and proves that the
person identified by number was not entitled to receive
payment from the originator, the originator is not
obliged to pay its order unless the originator's bank
proves that the originator, before acceptance of the
originator's order, had notice that payment of a payment
order issued by the originator might be made by the
beneficiary's bank on the basis of an identifying or bank
account number even if it identifies a person different
from the named beneficiary. Proof of notice may be
made by any admissible evidence. The originator's bank
satisfies the burden of proof if it proves that the
originator, before the payment order was accepted,
signed a writing stating the information to which the
notice relates.

(d) In a case governed by subdivision (1), subsection
(b) of this section, if the beneficiary's bank rightfully
pays the person identified by number and that person
was not entitled to receive payment from the originator,
the amount paid may be recovered from that person to
the extent allowed by the law governing mistake and
restitution as follows:

(1) If the originator is obliged to pay its payment
order as stated in subsection (c) of this section, the
originator has the right to recover; or

(2) If the originator is not a bank and is not obliged
to pay its payment order, the originator's bank has the
right to recover.

§46-4A-208. Misdescription of intermediary bank or
beneficiary's bank.

(a) This subsection applies to a payment order
identifying an intermediary bank or beneficiary's bank
only by an identifying number.

(1) The receiving bank may rely on the number as the
proper identification of the intermediary or benefi-
ciary's bank and need not determine whether the
number identifies the bank.

(2) The sender is obliged to compensate the receiving
bank for any loss and expenses incurred by the receiving
bank as a result of its reliance on the number in
executing or attempting to execute the order.

(b) This subsection applies to a payment order
identifying an intermediary bank or the beneficiary's
bank both by name and an identifying number if the
name and number identify different persons.

(1) If the sender is a bank, the receiving bank may
rely on the number as the proper identification of the
intermediary or beneficiary's bank if the receiving
bank, when it executes the sender's order, does not know
that the name and number identify different persons.
The receiving bank need not determine whether the
name and number refer to the same person or whether
the number refers to a bank. The sender is obliged to
compensate the receiving bank for any loss and expenses
incurred by the receiving bank as a result of its reliance
on the number in executing or attempting to execute the
order.
If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subdivision (1) of this subsection, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in subdivision (1), subsection (a), section three hundred two of this article.

§46-4A-209. Acceptance of payment order.

(a) Subject to subsection (d) of this section, a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d) of this section, a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) When the bank (A) pays the beneficiary as stated in subsection (a), section four hundred five of this article or subsection (b), section four hundred five of this article, or (B) notifies the beneficiary of receipt of the
order or that the account of the beneficiary has been
credited with respect to the order unless the notice
indicates that the bank is rejecting the order or that
funds with respect to the order may not be withdrawn
or used until receipt of payment from the sender of the
order;

(2) When the bank receives payment of the entire
amount of the sender's order pursuant to subdivision (1),
subsection (a), section four hundred three of this article
or subdivision (2), subsection (a), section four hundred
three of this article; or

(3) The opening of the next funds-transfer business
day of the bank following the payment date of the order
if, at that time, the amount of the sender's order is fully
covered by a withdrawable credit balance in an
authorized account of the sender or the bank has
otherwise received full payment from the sender, unless
the order was rejected before that time or is rejected
within (A) one hour after that time, or (B) one hour after
the opening of the next business day of the sender
following the payment date if that time is later. If notice
of rejection is received by the sender after the payment
date and the authorized account of the sender does not
bear interest, the bank is obliged to pay interest to the
sender on the amount of the order for the number of
days elapsing after the payment date to the day the
sender receives notice or learns that the order was not
accepted, counting that day as an elapsed day. If the
withdrawable credit balance during that period falls
below the amount of the order, the amount of interest
payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur
before the order is received by the receiving bank.
Acceptance does not occur under subdivision (2),
subsection (b) of this section or subdivision (3), subsec-
tion (b) of this section if the beneficiary of the payment
order does not have an account with the receiving bank,
the account has been closed or the receiving bank is not
permitted by law to receive credits for the beneficiary's
account.
(d) A payment order issued to the originator's bank cannot be accepted until (1) the payment date if the bank is the beneficiary's bank, or (2) the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently cancelled pursuant to subsection (b), section two hundred eleven of this article, the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.


(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (1) any means complying with the agreement is reasonable, and (2) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to subsection
(d), section two hundred eleven of this article or the day
the sender receives notice or learns that the order was
not executed, counting the final day of the period as an
elapsed day. If the withdrawable credit balance during
that period falls below the amount of the order, the
amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unac-
cepted payment orders issued to it are deemed rejected
at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later
rejection of the order. Rejection of a payment order
precludes a later acceptance of the order.

§46-4A-211. Cancellation and amendment of payment
order.

(a) A communication of the sender of a payment order
cancelling or amending the order may be transmitted
to the receiving bank orally, electronically or in writing.
If a security procedure is in effect between the sender
and the receiving bank, the communication is not
effective to cancel or amend the order unless the
communication is verified pursuant to the security
procedure or the bank agrees to the cancellation or
amendment.

(b) Subject to subsection (a) of this section, a commun-
ication by the sender cancelling or amending a payment
order is effective to cancel or amend the order if notice
of the communication is received at a time and in a
manner affording the receiving bank a reasonable
opportunity to act on the communication before the bank
accepts the payment order.

(c) After a payment order has been accepted, cancel-
lation or amendment of the order is not effective unless
the receiving bank agrees or a funds-transfer system
rule allows cancellation or amendment without agree-
ment of the bank.

(1) With respect to a payment order accepted by a
receiving bank other than the beneficiary's bank,
cancellation or amendment is not effective unless a
conforming cancellation or amendment of the payment
order issued by the receiving bank is also made.
(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (A) that is a duplicate of a payment order previously issued by the sender, (B) that orders payment to a beneficiary not entitled to receive payment from the originator, or (C) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by death or legal
incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subdivision (2), subsection (c) of this section.

§46-4A-212. Liability and duty of receiving bank regarding unaccepted payment order.

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section two hundred nine of this article, and liability is limited to that provided in this article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this article or by express agreement.

PART III. EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK.

§46-4A-301. Execution and execution date.

(a) A payment order is “executed” by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary’s bank can be accepted but cannot be executed.

(b) “Execution date” of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is
Ch. 30] BANKS AND BANKING 345

11 received and, unless otherwise determined, is the day
12 the order is received. If the sender's instruction states
13 a payment date, the execution date is the payment date
14 or an earlier date on which execution is reasonably
15 necessary to allow payment to the beneficiary on the
16 payment date.

§46-4A-302. Obligations of receiving bank in execution of
payment order.

1 (a) Except as provided in subsections (b) through (d)
2 of this section, if the receiving bank accepts a payment
3 order pursuant to subsection (a), section two hundred
4 nine of this article, the bank has the following obligations in executing the order:

5 (1) The receiving bank is obliged to issue, on the
6 execution date, a payment order complying with the
7 sender's order and to follow the sender's instructions
8 concerning (A) any intermediary bank or funds-transfer
9 system to be used in carrying out the funds transfer, or
10 (B) the means by which payment orders are to be
11 transmitted in the funds transfer. If the originator's
12 bank issues a payment order to an intermediary bank,
13 the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator.
14 An intermediary bank in the funds transfer is similarly
15 bound by an instruction given to it by the sender of the
16 payment order it accepts; and

19 (2) If the sender's instruction states that the funds
20 transfer is to be carried out telephonically or by wire
21 transfer or otherwise indicates that the funds transfer
22 is to be carried out by the most expeditious means, the
23 receiving bank is obliged to transmit its payment order
24 by the most expeditious available means, and to instruct
25 any intermediary bank accordingly. If a sender's
26 instruction states a payment date, the receiving bank is
27 obliged to transmit its payment order at a time and by
28 means reasonably necessary to allow payment to the
29 beneficiary on the payment date or as soon thereafter
30 as is feasible.

31 (b) Unless otherwise instructed, a receiving bank
32 executing a payment order may (1) use any funds-
transfer system if use of that system is reasonable in the circumstances, and (2) issue a payment order to the beneficiary’s bank or to an intermediary bank through which a payment order conforming to the sender’s order can expeditiously be issued to the beneficiary’s bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subdivision (2), subsection (a) of this section applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender’s order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (1) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender’s order by issuing a payment order in an amount equal to the amount of the sender’s order less the amount of the charges, and (2) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

§46-4A-303. Erroneous execution of payment order.

(a) A receiving bank that (1) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender’s order, or (2) issues a payment order in execution of the sender’s order and then issues a duplicate order, is entitled to payment of the amount of the sender’s order under subsection (c), section four hundred two of this article if that subsection is otherwise satisfied. The bank is
entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under subsection (c), section four hundred two of this article if (1) that subsection is otherwise satisfied, and (2) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

§46-4A-304. Duty of sender to report erroneously executed payment order.

If the sender of a payment order that is erroneously executed as stated in section three hundred three of this article receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of
information available to the sender, that the order was
erroneously executed and to notify the bank of the
relevant facts within a reasonable time not exceeding
ninety days after the notification from the bank was
received by the sender. If the sender fails to perform
that duty, the bank is not obliged to pay interest on any
amount refundable to the sender under subsection (d),
section four hundred two of this article for the period
before the bank learns of the execution error. The bank
is not entitled to any recovery from the sender on
account of a failure by the sender to perform the duty
stated in this section.

§46-4A-305. Liability for late or improper execution or
failure to execute payment order.

(a) If a funds transfer is completed but execution of
a payment order by the receiving bank in breach of
section three hundred two of this article results in delay
in payment to the beneficiary, the bank is obliged to pay
interest to either the originator or the beneficiary of the
funds transfer for the period of delay caused by the
improper execution. Except as provided in subsection (c)
of this section, additional damages are not recoverable.

(b) If execution of a payment order by a receiving
bank in breach of section three hundred two of this
article results in (1) noncompletion of the funds transfer,
(2) failure to use an intermediary bank designated by
the originator, or (3) issuance of a payment order that
does not comply with the terms of the payment order
of the originator, the bank is liable to the originator for
its expenses in the funds transfer and for incidental
expenses and interest losses, to the extent not covered
by subsection (a) of this section resulting from the
improper execution. Except as provided in subsection (c)
of this section, additional damages are not recoverable.

(c) In addition to the amounts payable under subsec-
tions (a) and (b) of this section, damages, including
consequential damages, are recoverable to the extent
provided in an express written agreement of the
receiving bank.

(d) If a receiving bank fails to execute a payment
order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney’s fees are recoverable if demand for compensation under subsection (a) or (b) of this section is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) of this section and the agreement does not provide for damages, reasonable attorney’s fees are recoverable if demand for compensation under subsection (d) of this section is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) of this section may not be varied by agreement.

PART IV. PAYMENT.

§46-4A-401. Payment date.

“Payment date” of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary’s bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary’s bank and, unless otherwise determined, is the day the order is received by the beneficiary’s bank.

§46-4A-402. Obligation of sender to pay receiving bank.

(a) This section is subject to sections two hundred five and two hundred seven of this article.

(b) With respect to a payment order issued to the beneficiary’s bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.
(c) This subsection is subject to subsection (e) of this section and to section three hundred three of this article. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in section two hundred four and section three hundred four of this article, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) of this section and an intermediary bank is obliged to refund payment as stated in subsection (d) of this section but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in subdivision (1), subsection (a), section three hundred two of this article, to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d) of this section.

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) of this section or to receive refund under subsection (d) of this section may not be varied by agreement.
§46-4A-403. Payment by sender to receiving bank.

(a) Payment of the sender's obligation under section four hundred two of this article to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system;

(2) If the sender is a bank and the sender (A) credited an account of the receiving bank with the sender, or (B) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact; or

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.
(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under section four hundred two of this article will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a) of this section, the time when payment of the sender's obligation under subsection (b), section four hundred two or subsection (c), section four hundred two of this article occurs is governed by applicable principles of law that determine when an obligation is satisfied.

§46-4A-404. Obligation of beneficiary's bank to pay and give notice to beneficiary.

(a) Subject to subsection (e), section two hundred eleven, subsection (d), section four hundred five, and subsection (e), section four hundred five of this article, if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment
order does not instruct payment to an account of the
beneficiary, the bank is required to notify the benefi-
ciary only if notice is required by the order. Notice may
be given by first class mail or any other means
reasonable in the circumstances. If the bank fails to give
the required notice, the bank is obliged to pay interest
to the beneficiary on the amount of the payment order
from the day notice should have been given until the day
the beneficiary learned of receipt of the payment order
by the bank. No other damages are recoverable.
Reasonable attorney’s fees are also recoverable if
demand for interest is made and refused before an
action is brought on the claim.

(c) The right of a beneficiary to receive payment and
damages as stated in subsection (a) of this section may
not be varied by agreement or a funds-transfer system
rule. The right of a beneficiary to be notified as stated
in subsection (b) of this section may be varied by
agreement of the beneficiary or by a funds-transfer
system rule if the beneficiary is notified of the rule
before initiation of the funds transfer.

§46-4A-405. Payment by beneficiary’s bank to
beneficiary.

(a) If the beneficiary’s bank credits an account of the
beneficiary of a payment order, payment of the bank’s
obligation under subsection (a), section four hundred
four of this article occurs when and to the extent (1) the
beneficiary is notified of the right to withdraw the
credit, (2) the bank lawfully applies the credit to a debt
of the beneficiary, or (3) funds with respect to the order
are otherwise made available to the beneficiary by the
bank.

(b) If the beneficiary’s bank does not credit an account
of the beneficiary of a payment order, the time when
payment of the bank’s obligation under subsection (a),
section four hundred four of this article occurs is
governed by principles of law that determine when an
obligation is satisfied.

(c) Except as stated in subsections (d) and (e) of this
section, if the beneficiary’s bank pays the beneficiary of
a payment order under a condition to payment or
agreement of the beneficiary giving the bank the right
to recover payment from the beneficiary if the bank does
not receive payment of the order, the condition to
payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that
payments made to beneficiaries of funds transfers made
through the system are provisional until receipt of
payment by the beneficiary's bank of the payment order
it accepted. A beneficiary's bank that makes a payment
that is provisional under the rule is entitled to refund
from the beneficiary if (1) the rule requires that both
the beneficiary and the originator be given notice of the
provisional nature of the payment before the funds
transfer is initiated, (2) the beneficiary, the beneficiary's
bank and the originator's bank agreed to be bound by
the rule, and (3) the beneficiary's bank did not receive
payment of the payment order that it accepted. If the
beneficiary is obliged to refund payment to the benefi-
ciary's bank, acceptance of the payment order by the
originator of the funds transfer to the beneficiary occurs
under section four hundred six of this article.

(e) (1) This subsection applies to a funds transfer that
includes a payment order transmitted over a funds-
transfer system that (A) nets obligations multilaterally
among participants, and (B) has in effect a loss-sharing
agreement among participants for the purpose of
providing funds necessary to complete settlement of the
obligations of one or more participants that do not meet
their settlement obligations.

(2) If the beneficiary's bank in the funds transfer
accepts a payment order and the system fails to
complete settlement pursuant to its rules with respect
to any payment order in the funds transfer, (A) the
acceptance by the beneficiary's bank is nullified and no
person has any right or obligation based on the
acceptance, (B) the beneficiary's bank is entitled to
recover payment from the beneficiary, (C) no payment
by the originator to the beneficiary occurs under section
four hundred six of this article, and (D) subject to
subsection (e), section four hundred two of this article, each sender in the funds transfer is excused from its obligation to pay its payment order under subsection (c), section four hundred two of this article because the funds transfer has not been completed.

§46-4A-406. Payment by originator to beneficiary; discharge of underlying obligation.

(a) Subject to subsection (e), section two hundred eleven, subsection (d), section four hundred five, and subsection (e), section four hundred five of this article, the originator of a funds transfer pays the beneficiary of the originator's payment order (1) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (2) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) of this section is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (1) the payment under subsection (a) of this section was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (2) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (3) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (4) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under subsection (a), section four hundred four of this article.

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b) of this section, if the beneficiary's bank accepts a payment
order in an amount equal to the amount of the originator’s payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator’s order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

PART V. MISCELLANEOUS PROVISIONS.

§46-4A-501. Variation by agreement and effect of funds-transfer system rule.

(a) Except as otherwise provided in this article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) “Funds-transfer system rule” means a rule of an association of banks, (1) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (2) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary’s bank. Except as otherwise provided in this article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in subsection (c), section four hundred four, subsection (d), section four hundred five, and subsection (c), section five hundred seven of this article.

§46-4A-502. Creditor process served on receiving bank; setoff by beneficiary’s bank.

(a) As used in this section, “creditor process” means
levy, attachment, garnishment, notice of lien, sequestra-
tion or similar process issued by or on behalf of a
creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with
respect to an authorized account of the sender of a
payment order if the creditor process is served on the
receiving bank. For the purpose of determining rights
with respect to the creditor process, if the receiving
bank accepts the payment order the balance in the
authorized account is deemed to be reduced by the
amount of the payment order to the extent the bank did
not otherwise receive payment of the order, unless the
creditor process is served at a time and in a manner
affording the bank a reasonable opportunity to act on
it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment
order for payment to the beneficiary's account in the
bank, the following rules apply:

(1) The bank may credit the beneficiary's account.
The amount credited may be set off against an obliga-
tion owed by the beneficiary to the bank or may be
applied to satisfy creditor process served on the bank
with respect to the account;

(2) The bank may credit the beneficiary's account and
allow withdrawal of the amount credited unless creditor
process with respect to the account is served at a time
and in a manner affording the bank a reasonable
opportunity to act to prevent withdrawal; or

(3) If creditor process with respect to the beneficiary's
account has been served and the bank has had a
reasonable opportunity to act on it, the bank may not
reject the payment order except for a reason unrelated
to the service of process.

(d) Creditor process with respect to a payment by the
originator to the beneficiary pursuant to a funds
transfer may be served only on the beneficiary's bank
with respect to the debt owed by that bank to the
beneficiary. Any other bank served with the creditor
process is not obliged to act with respect to the process.
§46-4A-503. Injunction or restraining order with respect to funds transfer.

For proper cause and in compliance with applicable law, a court may restrain (1) a person from issuing a payment order to initiate a funds transfer, (2) an originator's bank from executing the payment order of the originator, or (3) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order or otherwise acting with respect to a funds transfer.

§46-4A-504. Order in which items and payment orders may be charged to account; order of withdrawals from account.

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

§46-4A-505. Preclusion of objection to debit of customer's account.

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

§46-4A-506. Rate of interest.

(a) If, under this article, a receiving bank is obliged
to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (1) by agreement of the sender and receiving bank, or (2) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a) of this section, the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by three hundred sixty. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.


(a) The following rules apply unless the affected parties otherwise agree or subsection (c) of this section applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located;

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located; and

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is
governed by the law of the jurisdiction in which the
beneficiary's bank is located.

(b) If the parties described in each paragraph of
subsection (a) of this section have made an agreement
selecting the law of a particular jurisdiction to govern
rights and obligations between each other, the law of
that jurisdiction governs those rights and obligations,
whether or not the payment order or the funds transfer
bears a reasonable relation to that jurisdiction.

(c) (1) A funds-transfer system rule may select the
law of a particular jurisdiction to govern (A) rights and
obligations between participating banks with respect to
payment orders transmitted or processed through the
system, or (B) the rights and obligations of some or all
parties to a funds transfer any part of which is carried
out by means of the system.

(2) A choice of law made pursuant to paragraph (A)
of subdivision (1) is binding on participating banks.

(3) A choice of law made pursuant to paragraph (B)
of subdivision (1) is binding on the originator, other
sender, or a receiving bank having notice that the funds-
transfer system might be used in the funds transfer and
of the choice of law by the system when the originator,
other sender, or receiving bank issued or accepted a
payment order.

(4) The beneficiary of a funds transfer is bound by the
choice of law if, when the funds transfer is initiated, the
beneficiary has notice that the funds-transfer system
might be used in the funds transfer and of the choice
of law by the system. The law of a jurisdiction selected
pursuant to this subsection may govern, whether or not
that law bears a reasonable relation to the matter in
issue.

(d) In the event of inconsistency between an agree-
ment under subsection (b) of this section and a choice-
of-law rule under subsection (c) of this section, the
agreement under subsection (b) of this section prevails.

(e) If a funds transfer is made by use of more than
one funds-transfer system and there is inconsistency
between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

CHAPTER 31
(Com. Sub. for S. B. 437—By Senators Chafin and Wagner)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight, twenty-two, twenty-three and twenty-four, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulating and controlling the manufacture, sale, distribution, transportation, storage and consumption of nonintoxicating beer generally; establishing the qualifications of an applicant for a retailer's license to sell nonintoxicating beer; describing the powers of the nonintoxicating beer commissioner; eliminating the requirement that the collection of taxes be by the use of tax paid crowns, lids and/or stamps; providing for the suspension or revocation of a license or other sanctions against a licensee upon certain violations; providing for notice and hearing on the imposition of sanctions; authorizing the assessment of costs; and providing for the imposition of sanctions against a Class B licensee.

Be it enacted by the Legislature of West Virginia:

That sections eight, twenty-two, twenty-three and twenty-four, article sixteen, 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 16. NONINTOXICATING BEER.

§11-16-8. Form of application for license: fee and bond: refusal of license.
§11-16-22. Powers of the commissioner; rules or orders.
§11-16-8. Form of application for license; fee and bond; refusal of license.

(a) A license may be issued by the commissioner to any person who submits an application therefor, accompanied by a license fee, and, where required, a bond, stating under oath:

(1) The name and residence of the applicant, the duration of such residency, that the applicant has been a resident of the state for a period of two years next preceding the date of the application and that the applicant is twenty-one years of age. If the applicant is a firm, association, partnership, limited partnership or corporation, the application shall include the residence of the members or officers for a period of two years next preceding the date of such application: Provided, That if any person, firm, partnership, limited partnership, association or corporation applies for a license as a distributor, such person, or in the case of a firm, partnership, limited partnership or association, the members or officers thereof shall state under oath that each has been a bona fide resident of the state for four years preceding the date of such application;

(2) The place of birth of applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized or authorized to do business under the laws of the state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership or limited partnership, the place of birth of each member of the firm, association, partnership or limited partnership, and that each member is a citizen of the United States and if a naturalized citizen, when and where naturalized, each of whom must qualify and sign the application: Provided, That the requirements as to residence shall not apply to the officers of a corporation which shall apply for a retailer's license, but the officers, agent, or employee who shall manage and be in charge of the
Ch. 31] Beer 363

39 licensed premises shall possess all of the qualifications
40 required of an individual applicant for a retailer's
41 license, including the requirement as to residence;

42 (3) The particular place for which the license is
43 desired and a detailed description thereof;

44 (4) The name of the owner of the building and, if the
45 owner is not the applicant, that such applicant is the
46 actual and bona fide lessee of the premises;

47 (5) That the place or building in which is proposed to
do business conforms to all laws of health, fire and
zoning regulations applicable thereto, and is a safe and
proper place or building, and is not within three
hundred feet of any school or church, measured from
front door to front door, along the street or streets:
Provided, That this requirement shall not apply to a
Class B license, or to any place now occupied by a beer
licensee, so long as it is continuously so occupied:
Provided, however, That the prohibition against locating
any such proposed business in a place or building within
three hundred feet of any school shall not apply to any
college or university that has notified the commissioner,
in writing, that it has no objection to the location of any
such proposed business in a place or building within
three hundred feet of such college or university;

46 (6) That the applicant is not incarcerated and has not
during the five years immediately preceding the date of
said application been convicted of a felony;

47 (7) That the applicant is the only person in any
manner pecuniarily interested in the business so asked
to be licensed, and that no other person shall be in any
manner pecuniarily interested therein during the
continuance of the license; and

48 (8) That the applicant has not during five years next
immediately preceding the date of said application had
a nonintoxicating beer license revoked.

49 (b) The provisions and requirements of subsection (a)
of this section are mandatory prerequisites for the
issuance, and in the event any applicant fails to qualify
under the same, license shall be refused. In addition to
the information furnished in any application, the commissioner may make such additional and independent investigation of each applicant, and of the place to be occupied, as deemed necessary or advisable; and for this reason each and all applications, with license fee and bond, must be filed thirty days prior to the beginning of any fiscal year, and if application is for an unexpired portion of any fiscal year, issuance of license may be withheld for such reasonable time as necessary for investigation.

(c) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner shall be of the opinion:

(1) That the applicant is not a suitable person to be licensed;

(2) That the place to be occupied by the applicant is not a suitable place; or is within three hundred feet of any school or church, measured from front door to front door along the street or streets: Provided, That this requirement shall not apply to a Class B licensee, or to any place now occupied by a beer licensee, so long as it is continuously so occupied: Provided, however, That the prohibition against locating any such place to be occupied by an applicant within three hundred feet of any school shall not apply to any college or university that has notified the commissioner, in writing, that it has no objection to the location of any such place within three hundred feet of such college or university; or

(3) That the license should not be issued for reason of conduct declared to be unlawful by this article.

§11-16-22. Powers of the commissioner; rules, or orders.

(a) In addition to all other powers conferred upon the commissioner and in order to effectively carry out the provisions, intent and purposes of this article, the commissioner shall have the power and authority to adopt, promulgate, repeal, rescind and amend, in accordance with the provisions of chapter twenty-nine-a of this code, rules, standards, requirements and orders, including, but not limited to, the following:

(1) Prescribing records and accounts, pertaining to
the manufacture, distribution and sales of nonintoxicat-
ing beer, to be kept by the licensee and the form thereof;

(2) Requiring the reporting of such information by
licensees as may be necessary for the effective admin-
istration of this article;

(3) Regulating the branding and labeling of packages,
bottles or other containers in which nonintoxicating beer
may be sold; and, in his discretion, requiring the
collection of all taxes provided for under section thirteen
of this article;

(4) Prohibiting shipment into the state and sale within
the state of low grade or under-standard nonintoxicating
beer;

(5) Referring to licenses and the issuance and revoca-
tion of the same;

(6) Establishing the suitability of businesses and
locations for licensure, and requiring licensees to keep
their places of business where nonintoxicating beer is
sold at retail, and the equipment used in connection
therewith, clean and in a sanitary condition;

(7) The establishment of advertising guidelines,
prohibitions and prior permissions generally, including,
but not limited to, (i) the use of posters, placards,
mirrors, windows, doors or indoor and outdoor signs
generally, and print and electronic advertising of retail
licensees specifically, (ii) the sponsoring of athletic
events or contests by licensees and restrictions relating
thereto, (iii) the use of equipment, fixtures or supplies
in advertising, (iv) false advertising with respect to any
product of or sold by any licensee, including, but not
limited to, draft beer and coolers and (v) the extent, if
any, to which free goods and other inducements may be
utilized by any licensee;

(8) Wholesale prices or price changes, including, but
not limited to, the regulation and extent, if any, of any
temporary price markoff or markdown, temporary
wholesale price change downward or price discount,
sometimes referred to as "post downs" or as "posting
down" or any other price change, the express purpose
of which is to put into effect a temporary price
reduction, as well as the duration of time during which
such temporary price reduction is to remain in effect;

(9) Restrictions upon West Virginia distributors or
other licensees with respect to the purchase of any
nonintoxicating beer or malt coolers from manufactur-
ers or brewers whether within or without the state who
have failed to qualify for manufacture or shipment of
any such product in the state; and

(10) Regulating, restricting or prohibiting a distrib-
utor from selling, offering for sale, distributing or
delivering nonintoxicating beer to any retailer whose
principal place of business, residence or licensed
premises is located without or beyond the assigned
territory of such distributor of such nonintoxicating
beer.

(b) Any rule or order heretofore adopted by the
commissioner and currently in effect upon the conven-
ing of the regular session of the Legislature held in the
year one thousand nine hundred eighty-six shall remain
in effect until changed by the commissioner in the
manner prescribed by article three, chapter twenty-
nine-a of this code, irrespective of whether specific
authority for such currently effective rule existed prior
to such date.

§11-16-23. Revocation or suspension of license; monetary
penalty; hearing assessment of costs; establish-
ment of enforcement fund.

(a) Upon a determination by the commissioner that a
licensee has (i) violated the provisions of section eighteen
of this article, (ii) acted in such a way as would have
precluded initial or renewal licensure or (iii) violated
any rule or order promulgated by the commissioner, the
commissioner may:

(1) Revoke the licensee’s license;

(2) Suspend the licensee’s license;

(3) Place the licensee on probationary status for a
period not to exceed twelve months; and

(4) Impose a monetary penalty not to exceed one
thousand dollars for each violation where revocation is
not imposed.
(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the state treasurer for deposit into the state treasury to the credit of a special revenue fund designated the "Nonintoxicating Beer Enforcement Fund", which is hereby created. All moneys collected, received and deposited in the "Nonintoxicating Beer Enforcement Fund" shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to nonintoxicating beer, and shall not be treated by the state treasurer or state auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the nonintoxicating beer enforcement fund in excess of two thousand dollars shall be transferred to the general revenue fund.

(c) In addition to the grounds for revocation, suspension or other sanction of a license set forth in subsection (a) of this section, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer or alcoholic liquor shall be mandatory grounds for such sanctioning of a license.

§11-16-24. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; assessment of costs.

The commissioner shall not revoke nor suspend any license issued pursuant to this article or impose any civil penalties authorized thereby unless and until a hearing shall be held after at least ten days' notice to the licensee of the time and place of such hearing, which notice shall contain a statement or specification of the charges, grounds or reasons for such proposed contemplated action, and which shall be served upon the licensee as notices under the West Virginia rules of civil procedure or by certified mail, return receipt requested, to the address for which license was issued; at which time and place, so designated in the notice, the licensee shall have the right to appear and produce evidence in his behalf, and to be represented by counsel.
The commissioner shall have authority to summon witnesses in the hearings before him, and fees of witnesses summoned on behalf of the state in proceedings to sanction licenses shall be treated as a part of the expenses of administration and enforcement. Such fees shall be the same as those in similar hearings in the circuit courts of this state. The commissioner may, upon a finding of violation, assess a licensee a sum, not to exceed one hundred fifty dollars per violation to reimburse the commissioner for expenditures for witness fees, court reporter fees and travel costs incurred in holding the hearing. Any moneys so assessed shall be transferred to the nonintoxicating beer fund created by section twenty-three of this article.

If, at the request of the licensee or on his motion, the hearing shall be continued and shall not take place on the day fixed by the commissioner in the notice above provided for, then such licensee's license shall be suspended until the hearing and decision of the commissioner, and in the event of revocation or suspension of such license, upon hearing before the commissioner, the licensee shall not be permitted to sell beer pending an appeal as provided by this article. Any person continuing to sell beer after his license has been suspended or revoked, as hereinbefore provided, is guilty of a misdemeanor and shall be punished as provided in section nineteen of this article.

The action of the commissioner in revoking or suspending a license shall be subject to review by the circuit court of Kanawha County, West Virginia, in the manner provided in chapter twenty-nine-a of this code, when such licensee may be aggrieved by such revocation or suspension. Petition for such review must be filed with said circuit court within a period of thirty days from and after the date of revocation or suspension by the commissioner; and any licensee obtaining an order for such review shall be required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to such matter to the circuit court. An application to the supreme court of appeals of West Virginia for a writ of error from any final order of the circuit court in any such matter shall be made
within thirty days from and after the entry of such final order.

All such hearings, upon notice to show cause why license should be revoked or suspended, before the commissioner, shall be held in the offices of the commissioner in Charleston, Kanawha County, West Virginia, unless otherwise provided in such notice, or agreed upon between the licensee and the commissioner; and when such hearing is held elsewhere than in the commissioner’s office, the licensee may be required to make deposits of the estimated costs of such hearing.

Whenever any licensee has been convicted of any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer, or alcoholic liquor, and such conviction has become final, the clerk of the court in which such licensee has been convicted shall forward to the commissioner a certified copy of the order or judgment of conviction if such clerk has knowledge that the person so convicted is a licensee, together with the certification of such clerk that the conviction is final.

In the case of a Class B licensee with multiple licensed locations, the commissioner may, in his or her discretion, revoke, suspend or otherwise sanction, per the provisions of section twenty-three of this article, only the license for the location or locations involved in the unlawful conduct for which licensure is sanctioned as opposed to all separately licensed locations of such licensee.

CHAPTER 32
(H. B. 4386—By Delegate Ashcraft)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section fourteen, 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-3-14. Bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.

Bids shall be based on the standard specifications promulgated and adopted in accordance with the provisions of section five of this article, and shall not be altered or withdrawn after the appointed hour for the opening of such bids. All open market orders, purchases based on advertised bid requests or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the government and the delivery terms:

Provided, That state bids on school buses shall be accepted from all bidders who shall then be awarded contracts if they meet the state board’s “Minimum Standards for Design and Equipment of School Buses”. County boards of education may select from those bidders who have been awarded contracts and shall pay the difference between the state aid formula amount and the actual cost of bus replacement. Any or all bids may be rejected. If all bids received on a pending contract are for the same unit price or total amount, the director shall have authority to reject all bids, and to purchase the required commodities and printing in the open market, if the price paid in the open market does not exceed the bid prices.

All bidders submitting bid proposals to the purchasing division are required to submit an extra or duplicate copy to the state auditor. Both copies must be received at the respective offices prior to the specified date and time of the bid openings. The failure to deliver or the nonreceipt of these bid forms at either of these offices

*Clerk's Note: This section was also amended by SB 320 (Chapter 2), which passed subsequent to this act.
prior to the appointed date and hour are grounds for
rejection of the bids. In the event of any deviation
between the copies submitted to the purchasing division
and the state auditor, such bids as to which there is such
deviation shall be rejected, if the deviation relates to the
quantity, quality or specifications of the commodities or
printing to be furnished or to the price therefor or to
the date of delivery or performance. After the award of
the order or contract, the director, or someone appointed
by him for that purpose, shall indicate upon the
successful bid and its copy in the office of the state
auditor that it was the successful bid. Thereafter, the
copy of each bid in the possession of the director and
the state auditor shall be maintained as a public record
by both of them, shall be open to public inspection in
the offices of both the director and the state auditor and
shall not be destroyed by either of them without the
written consent of the legislative auditor: Provided, That
the governing boards may certify in writing to the
director the need for a specific item essential to a
particular usage either for instructional or research
purposes at an institution of higher education and the
director upon review of such certification may provide
for the purchase of said specific items in the open
market without competitive bids.

CHAPTER 33
(Com. Sub. for H. B. 4479—By Delegate M. Burke)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eight,
chapter twenty-nine of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the Blennerhassett historical state park generally;
requiring the Blennerhassett historical park commission
to conduct meetings in accordance with the open
governmental meetings law; and granting exclusive
regulatory authority over the water transport of visitors
to Blennerhassett Island to the division of commerce.
shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, That no person included in the classified service by the provisions of this section who is employed in any of such positions as of the effective date of this section, shall be thereafter severed, removed or terminated from such employment prior to his entry into the classified service except for cause as if such person had been in the classified service when severed, removed or terminated.

Notwithstanding any provision of this code to the contrary, the division of commerce shall have exclusive regulatory authority over watercraft transport of visitors to the Blennerhassett Island portion of the Blennerhassett historical state park and such watercraft transport shall not be subject to the provisions of article eighteen, chapter seventeen of this code.

CHAPTER 34
(S. B. 279—Originating in the Committee on Finance)

[Passed February 14, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to the West Virginia state board of investments; providing legislative findings; and prohibiting attempts to recover overpayments made from consolidated fund to local governments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

§12-6-5a. Legislative findings and limitation on certain board actions.
(a) The Legislature hereby finds and declares that, during the period beginning the first day of August, one thousand nine hundred eighty-four, and ending on the thirty-first day of January, one thousand nine hundred eighty-nine, certain overapportionments or overpayments of interest earnings were made by the board of investments to local government participants in the consolidated investment fund local government account.

The Legislature also finds and declares that said participants were not at fault for any losses incurred by the consolidated fund during the aforesaid period, and that the participants were justified in accepting and using the overapportionments or overpayments of interest earnings credited to their accounts.

The Legislature further finds and declares that attempts by the board of investments, the state or any other state officer or agency to recover the overapportionments or overpayments would harm the public good and create economic hardship for local governments, and, therefore, said overapportionments or overpayments ought not to be subject to recovery by the board or any other state officer or agency.

(b) Neither the state, the board of investments nor any other state officer or agency may expend any funds or permit any personnel to seek, or attempt to recover, from participants in the consolidated fund local government account any moneys received by such participants solely as a result of erroneous allocation of interest earnings to the participants' account during the period of time beginning the first day of August, one thousand nine hundred eighty-four, and ending on the thirty-first day of January, one thousand nine hundred eighty-nine, unless authorized to do so by enactment of a separate and specific statute.

(c) This section shall not apply to any attempt by the board, the state or any other state officer or agency to recover moneys due for any other reason.
AN ACT to amend article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to continuation of the West Virginia board of investments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

§12-6-18. West Virginia board of investments continued.

1 After having conducted a performance and fiscal 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 board of investments should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the West Virginia board of investments shall continue to exist until the first day of July, one thousand nine hundred ninety-six.

CHAPTER 36

(Com. Sub. for S. B. 67—By Senators Chafin, Blatnik, Wagner, J. Manchin and Warner)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]
een, relating to the regulation of cable television systems; providing for a short title; establishing legislative findings; defining certain terms; requiring all cable operators to obtain franchises for cable systems; designating franchising authorities; existing franchises to remain in effect; creating the West Virginia cable television advisory board; establishing the composition of, terms of office and certain duties and authority of the board; compensation for board members; setting forth specific duties of the board; establishing the application or proposal process for cable franchises and establishing fees and requirements therefor; requiring the holding of a public hearing for the issuance of a franchise with notice thereof to be given appropriate governing bodies and the general public; when cable franchise to be issued; establishing criteria to be considered by franchising authorities; providing for the terms and conditions of cable system installation, construction, operation and removal; when cable franchise may be revoked, altered or suspended; when civil fine may be imposed; establishing procedure for renewal of a cable franchise; prohibiting the transfer of any cable system or cable franchise without approval of appropriate franchising authorities; cable operators to file schedule of rates with board; authorizing board to regulate rates and other charges to the extent permitted by federal law; mandating cable operators to provide safe, adequate and reliable service; establishing procedures for the restoring of interrupted service and substandard service; when subscriber to receive credit or refund for interrupted service; setting forth office operating requirements for cable operators; requiring cable operators to mail notice to subscribers and prescribing contents thereof; requiring cable operators to maintain a record of all complaints regarding quality of service, rates, programming, equipment malfunctions, billing procedures, employee relations with customers and similar matters; mandating the filing of all franchise and related documents with the board; clarifying that application fees are franchise fees within the intent and meaning of federal law; prohibiting cable operators from discriminating against subscribers or
channel users; establishing procedure for the consideration of consumer complaints by the board; when cable operator may be fined; prescribing further duties of the board; authorizing board to bring legal action for enforcement purposes; reports to be filed by cable operators; assessing annual fee against cable operators; clarifying effect of annual fee on other franchise fees; prohibiting the regulation of the cable television industry as a utility; and providing for the severability of the provisions of this article.

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

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

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

**ARTICLE 18. WEST VIRGINIA CABLE TELEVISION SYSTEMS ACT.**

§5-18-1. Short title.

§5-18-2. Legislative findings.


§5-18-4. Cable franchise required; franchising authority.

§5-18-5. Existing cable franchises.

§5-18-6. West Virginia cable television advisory board created; appointments and terms of members; meetings; vacancies; quorum.

§5-18-7. Compensation and expenses of board members.

§5-18-8. Duties of West Virginia cable television advisory board.

§5-18-9. Application or proposal for cable franchise; fee; certain requirements.

§5-18-10. Cable franchise application or proposal procedure; public hearing; notice.

§5-18-11. Issuance of cable franchise authority; criteria; content.

§5-18-12. Cable system installation, construction, operation, removal; general provisions.

§5-18-13. Revocation, alteration, or suspension of cable franchise; penalties.


§5-18-16. Rates; filing with board; approval.

§5-18-17. Requirement for adequate service; terms and conditions of service.

§5-18-19. Credit or refund for interrupted service.

§5-18-20. Office operating requirements; office hours.


§5-18-22. Recording of subscriber complaints.


§5-18-25. Complaints; violations; penalties.

§5-18-26. Other duties of board; suit to enforce article.

§5-18-27. Reports.

§5-18-28. Annual fees; effect of application and filing fees on franchise fees.

§5-18-29. Cable television industry not regulated as a utility.


§5-18-1. Short title.

This article may be cited as the “West Virginia Cable Television Systems Act”.

§5-18-2. 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 this article is to promote such goals by all available means not in conflict with federal law, rules or regulations.


As used in this article:

(1) “Applicant” means a person who initiates an application or proposal.
4 (2) "Application" means an unsolicited filing for a cable franchise.

5 (3) "Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

6 (4) "Board" means the West Virginia cable television advisory board created under the provisions of this article.

7 (5) "Cable franchise" means a nonexclusive initial authorization or renewal thereof issued pursuant to this article, whether the authorization is designated as a franchise, permit, order, contract, agreement or otherwise, which authorizes the construction or operation of a cable system.

8 (6) "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.

9 (7) "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.

10 (8) "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.

(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 West Virginia cable television
advisory board.

(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 the 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.

§5-18-4. 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 article.

(b) Any person operating a cable system on the effective date of this article without a franchise shall, within sixty days of the effective date of this article, notify the board 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; and (4) the number of subscribers within the cable system or systems. If the board shall not have been appointed and organized within sixty days of the effective date of this article, then such filing shall be made with the public service commission where such documents shall be retained for delivery to the board following the appointment and organization of its members.

(c) The board 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 shall, within sixty days of receipt of such notice from the board, make formal application to the appropriate franchise 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, 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.

(e) Any municipality or county commission may elect not to act as a franchising authority, in which event the franchising authority for any cable system to be constructed, operated, acquired or extended within the jurisdiction of such municipality or within the jurisdiction of such county commission shall be the board. If any municipality or county commission so elects, the mayor or president of the county commission shall certify such delegation in writing to the presiding officer of the board.

§5-18-5. Existing cable franchises.

(a) The provisions of any cable franchise in effect on the effective date of this article 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.

§5-18-6. West Virginia cable television advisory board
created; appointments and terms of members;
meetings; vacancies; quorum.

(a) There is hereby created a cable review board to
be known as the “West Virginia Cable Television
Advisory Board” which board shall, in consultation with
the attorney general’s office, implement the provisions
of this article and consider subscriber complaints in
accordance with the provisions of section twenty-five of
this article.

(b) The board shall consist of seven members, who
shall be residents of this state, and who shall be
appointed as follows:

(1) The governor shall appoint one member to repres-
ent the viewpoint of the public service commission.
When the member is to be appointed, the governor shall
request from the public service commission a list of
three nominees for such position. A summary of the
qualifications of each nominee shall be submitted with
each list. When the completed list of nominees is
submitted in accordance with the provisions hereof, the
governor shall make his or her appointment from the
persons so nominated.

(2) The governor shall appoint one member to repres-
ent the viewpoint of those cable operators whose cable
system or systems in the aggregate have five thousand
subscribers or more, and one member to represent the
viewpoint of cable operators whose cable system or
systems in the aggregate have less than five thousand
subscribers. The governor shall request from the trade
association representing cable operators in this state a
list of three nominees for each such position of the board.
All nominees shall be persons with special experience
and competence in cable television operations. A
summary of the qualifications of each nominee shall be
submitted with each list. When the completed list of
nominees for each position is submitted in accordance
with the provisions hereof, the governor shall make his
or her appointments from the persons so nominated.

(3) The governor shall appoint one member to repres-
ent the viewpoint of municipalities within the state and
one member to represent the counties within the state.
The governor shall request from the associations
representing the municipalities and counties, respec-
tively, a list of three nominees for such position. A
summary of the qualifications of each nominee shall be
submitted with each list. When the completed list of
nominees is submitted in accordance with the provisions
hereof, the governor shall make his or her appointments
from the persons so nominated.

(4) The governor shall appoint two members from the
general public who shall be from different political
parties and who shall not represent the viewpoint of the
members appointed in accordance with the provisions of
subdivision (2) or (3) of this subsection.

(5) All appointments made by the governor under the
provisions of this section shall be with the advice and
consent of the Senate.

(c) Upon the initial appointment of members, the
governor shall specify the length of the beginning term
which each member shall serve, pursuant to the
following formula:

(1) With regard to the two members appointed in
accordance with the provisions of subdivisions (2) and
(3), subsection (b) of this section, one member shall serve
a beginning term of two years, and one member shall
serve a beginning term of three years;

(2) The two members appointed in accordance with
the provisions of subdivision (3), subsection (b) of this
section shall serve a term of two years;

(3) The member appointed in accordance with the
provisions of subdivision (1), subsection (b) of this section
shall be appointed to serve a beginning term of one year;
and
(4) Following the beginning terms provided for in this subsection, members shall be nominated and appointed in the manner provided for in this section and shall serve for a term of three years. Members are eligible for reappointment.

(d) The board shall meet at least once during each calendar quarter, or more often as may be necessary, and at other times upon the call of the chairman or upon the request of any three members of the board. The chairman shall set the agenda for all meetings. No meeting of the board may be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the chairman, in which event members shall be notified of the board meeting and the agenda in a manner to be determined by the chairman. Four members of the board shall constitute a quorum and no action may be taken by the board unless agreed to by a majority of the members present.

(e) Each member of the board shall take and subscribe to the oath or affirmation required pursuant to section 5, article IV of the constitution of West Virginia. A member may be removed by the governor for substantial neglect of duty or gross misconduct in office, after written notice and an opportunity to reply.

(f) The board shall meet within thirty days of the initial appointments to the board, at a time and place to be determined by the governor, who shall designate a member to preside at that meeting until a chairman is elected. At its first meeting, the board shall elect a chairman and such other officers as are necessary.

(g) The board shall, within six months after the appointment of the initial board, promulgate rules for its procedure and to otherwise carry out its duties under the provisions of this article. Such rules shall be promulgated as legislative rules subject to legislative rule-making review and subject to the administrative procedures act.

(h) The board may subpoena witnesses, compel their
attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, logs, papers, records or other evidence needed for the performance of the board's duties or exercises of its power under the provisions of section twenty-five of this article.

(i) The board may request the attorney general to provide legal advice to the board and the attorney general shall comply with the request. The board shall employ an executive secretary to be compensated from the cable advisory board fund created under the provisions of this article in an amount to be fixed by the board. Such executive secretary shall be in charge of its offices which shall be within the public service commission, shall be responsible to the board for the maintenance of such offices and shall be the custodian of all documents filed by cable operators and of any complaints or other documents which may be filed with the board in accordance with the provisions of this article. The board is also authorized to employ and assign the necessary professional and clerical staff and such hearing examiners as may be necessary to conduct hearings in such various locations in the state, under the provisions of section twenty-five of this article, in order to provide a convenient forum for persons making subscriber complaints to be heard. The salaries and expenses of any such staff and hearing examiners shall be paid from the fees assessed and collected under provisions of this article.

§5-18-7. Compensation and expenses of board members.

Each member of the board not otherwise employed by the state shall receive a per diem in the amount of fifty dollars while actually engaged in the performance of the duties of the board, which shall be paid out of the cable advisory board fund created under the provisions of this article. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of his or her duties. Each member shall receive meals, lodging and mileage expense reimbursements at the rates established by rule of the secretary of the department of administration for
in-state travel of public employees. The reimbursement shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the chairman of the board.

§5-18-8. Duties of West Virginia cable television advisory board.

The West Virginia cable television advisory board shall:

(1) Develop and maintain a statewide plan for the provision of cable services, setting forth the objectives which the board deems to be in the best interest of the citizens of this state;

(2) To the extent permitted by, and not contrary to applicable federal law, rules and regulations:

(A) 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 board may otherwise deem necessary or appropriate to assure maximum public participation and competition and to protect the public interest;

(B) 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 board 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;

(C) 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;

(D) 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 board’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;

(E) 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 board 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;

(3) Provide advice and technical assistance to other franchising authorities and community organizations in matters relating to cable franchises and services;

(4) Establish minimum specifications for equipment, service and safety of cable;

(5) Represent the interests of citizens of this state before the federal communication commission and make available information to the public on communications developments at the federal level;

(6) Stimulate and encourage cooperative arrangements among organizations, institutions, counties and municipalities in the development of public, educational or governmental access facilities;

(7) 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;

(8) Undertake such studies as may be necessary to meet the responsibilities and objectives of this article; and

(9) 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.

§5-18-9. 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 board. The application shall set forth the facts as required by the board 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 board 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.

§5-18-10. 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 board, 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 article.

(2) After the issuance of a notice of acceptance for filing and within a time frame established by rule promulgated by the board, 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 board, 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.

§5-18-11. Issuance of cable franchise authority; criteria; content.

(a) A franchising authority is 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.

§5-18-12. 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 within the service area above, below, on, in or along any highway or other public place and through easements which have been dedicated for compatible purposes.

(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 maintenance of its cable system, notwithstanding any negligence on the part of the state, county and/or municipality, their employees 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 public service 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 to compatible purposes, 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.

§5-18-13. Revocation, alteration, or suspension of cable franchise; penalties.

(a) Any cable franchise issued in accordance with the provisions of this article may be revoked, altered or suspended by the franchising authority upon the recommendation of the cable advisory board 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 failure to maintain signal quality under the standards prescribed by the board;

(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 violation of the terms of its cable franchise;

(6) For failure to comply with this article or any rules, regulations or orders prescribed by the board;

(7) For 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 board. 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 article.


Any cable franchise issued pursuant to this article 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 article. The form of the application or proposal shall be prescribed by the board. 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 board 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.


(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 article, and including the rights, privileges and obligations thereof, may be assigned, sold, leased, encumbered or otherwise transferred, voluntarily or involuntarily, directly or indirectly, 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. The form of the application for transfer shall be prescribed by the board.

(b) 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 nine and ten of this article for the consideration of issuing cable franchises, including the application fee therefor.

§5-18-16. Rates; filing with board; approval.

(a) The board shall require each cable operator to file a schedule of its rates of service on a form and with the notice that the board may prescribe.

(b) To the extent permitted by federal law, the board 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 board 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 discrimina-

§5-18-17. 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 board 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 board may prescribe.

(c) The board 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 exte-
nuating 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 board indicating that service has been restored and explaining the nature of the extenuating circumstances.

§5-18-19. 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 board shall promulgate rules establishing a viewing time reliability standard for cable operators and requiring such companies to file with the board information on service interruptions not caused by subscribers.

§5-18-20. Office operating requirements; office hours.

Each cable operator shall operate a business office in the service area or in an immediately adjacent franchise area as may be approved by the board 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 board, 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 board;

(2) States the responsibility of the board 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 nineteen 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 of each year, the operator shall certify to the franchising authority and the board that it has distributed the notice as provided in this section during the previous calendar year as required by this section.

§5-18-22. Recording of subscriber complaints.

(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 board. 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 article, every cable operator shall make the logs or records, or both, of such complaints available to any authorized agent of the board and the franchising authority, upon request during normal business hours for on-site review.


(a) Within sixty days of the effective date of this article, all cable operators holding an existing franchise shall file a copy of the franchise and any federal communications commission rulings or other rulings affecting such franchises with the board. If the board shall not have been appointed and organized within
sixty days of the effective date of this article, then such filing shall be made with the public service commission where such documents shall be retained for delivery to the board following the appointment and organization of its members.

(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 board and the franchising authority. The board 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 article.


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.

§5-18-25. Complaints; violations; penalties.

(a) Subscriber complaints regarding the operation of a cable system must be made in writing and filed with the board. The board shall take up such complaints with the cable operator complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(b) The board 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 of 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 board cannot resolve the complaint to the satisfaction of all parties, the complainant may file a formal request to the board and he or she is entitled to a hearing before the board, which hearing shall be conducted in accordance with chapter twenty-nine-a of the code, and the complainant and cable operator shall be afforded all rights including the right of appeal as set forth in said chapter twenty-nine-a.

(d) A cable operator may be subject to a fine in accordance with subsection (e) hereof, upon a determination by the board that the cable operator has violated any of the following:

(1) The material terms of its cable franchise; or

(2) Substantial compliance with rules or orders prescribed by the board.

(e) The board may fine a cable operator for each violation of subsection (d) of this section in an amount not less than fifty dollars nor more than five hundred 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) The board may permit, in lieu of a full hearing before the board, one of its hearing examiners to conduct hearings and report its findings to the board.

(g) No cable operator shall charge for more than one outlet per household.

(h) No cable operator shall add new channels and charge subscribers without the consent of the subscriber.
§5-18-26. Other duties of board; suit to enforce article.

(a) The board 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 article and to do all things which are necessary or convenient in the exercise of this power and jurisdiction.

(b) The board may adopt rules and regulations as are necessary to implement the provisions of this article.

(c) The board or the board’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 board 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 board 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 article, 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.

§5-18-27. Reports.

Each cable operator shall file with the board 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 board and shall be kept on file open to the public.

§5-18-28. Annual fees; effect of application and filing fees on franchise fees.

(a) Each cable operator shall pay to the board an
annual fee in an amount not less than twenty cents per subscriber or such greater annual fee as may be determined by the board. Such funds and all other funds to be paid to the board under the provisions of this article shall be deposited into a special fund designated the "cable advisory board fund". Such fund shall be used for purposes of administering the provisions of this article. To the extent permitted by federal law, the board 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 article and the annual fee to be paid to the board 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.

§5-18-29. Cable television industry not regulated as a utility.

No provision of this article may be construed to grant the board the power to regulate the cable television industry as a utility.


If any provision of any subparagraph, subsection or section of this article is held to be unconstitutional or void, the remaining provisions of such subparagraph, subdivision, subsection or section shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon the unconstitutional or void provision that the court cannot presume the Legislature would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.
CHAPTER 37

(Com. Sub. for S. B. 459—By Senators Warner, Chafin and J. Manchin)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to venture capital authority; the West Virginia capital company act; changing the designation "board" or "board of directors of the West Virginia industrial and trade jobs development corporation", wherever found to the designation "authority" or "West Virginia economic development authority"; definitions; and including computer companies engaged in the creation of computer software as a qualified activity for which venture or risk capital may be made available for investments.

Be it enacted by the Legislature of West Virginia:

That section four, 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-1-4. Definitions.

1 As used in this article, the following terms shall have
2 the meanings ascribed to them in this section, unless the
3 context in which the term is used clearly requires
4 another meaning or a specific different definition is
5 provided.

6 (a) "Authority" means the West Virginia economic
7 development authority, provided for in article fifteen,
8 chapter thirty-one of this code.

9 (b) "Capital base" means equity capital or net worth.

10 (c) "Certified West Virginia capital company" means:

11 (1) A West Virginia business development corporation
12 created pursuant to article fourteen, chapter thirty-one
13 of this code; or
(2) A profit or nonprofit entity organized and existing under the laws of this state, created for the purpose of making venture or risk capital available to qualified investments, that has been certified by the authority.

(d) "Qualified investment" means a debt or equity financing of a West Virginia business, but only if the business is engaged in one or more of the following activities: Manufacturing; agricultural production or processing; forestry production or processing; mineral production or processing, except for conventional oil and gas exploration; service industry; transportation; research and development of products or processes associated with any of the activities previously enumerated above; tourism; computer software development companies engaged in the creation of computer software; and wholesale or retail distribution activities within the state.

(e) "Qualified West Virginia capital company" means a West Virginia capital company that has been designated by the authority as a qualified capital company under the provisions of section six of this article.

(f) "State" means the state of West Virginia.

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CHAPTER 38

(Com. Sub. for S. B. 77—By Senator Rundle)

[Passed March 8, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend and reenact sections one and four, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to continuing the capitol building commission; members of the commission; and powers and duties generally.

Be it enacted by the Legislature of West Virginia:

That sections one and four, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-1. Creation; composition; qualifications.

§4-8-4. Powers and duties generally.

§4-8-1. Creation; composition; qualifications.

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.

To allow for the completion of 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 capitol building commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the capitol building commission shall continue to exist until the first day of July, one thousand nine hundred ninety-two.

§4-8-4. Powers and duties generally.

The capitol building commission shall review and approve or reject all plans recommending substantial physical changes inside or outside the state capitol building or surrounding complex, including the public meeting rooms, hallways and grounds, which affect the appearance thereof. The approval of the commission is mandatory before a contract may be let for work which constitutes a substantial physical change, or before changes are started if the work is not done under a contract. As used in this article, the surrounding
complex shall include the governor's mansion and other
buildings used by the governor as part of his residence,
the state science and cultural center, all state office
buildings located in the immediate vicinity of the state
capitol, and the roadways, structures and facilities
which are incidental to such buildings. As used in this
article, substantial physical change shall include, but
not be limited to, permanent physical changes that alter
the appearance of the public areas of the capitol
building and surrounding complex. The secretary of the
department of administration shall promulgate rules
and regulations, pursuant to the provisions of chapter
twenty-nine-a of this code, which rules and regulations
shall be subject to the approval of the capitol building
commission, to implement the provisions of this article.

CHAPTER 39
(S. B. 1—By Senators Brackenrich and J. Manchin)

[Passed January 25, 1990: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two,
chapter forty-eight-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to continuing the child advocate office.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-1. Reestablishment of the West Virginia child
advocate office.

(a) There is hereby established within the division of
human services the child advocate office.

(b) Pursuant to the provisions of section four, article
ten, chapter four of this code, the child advocate office
shall continue to exist until the first day of July, one
thousand nine hundred ninety-one, to allow for the
completion of an audit by the joint committee on
government operations.

CHAPTER 40

(Com. Sub. for H. B. 4398—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to repeal section five, article three, and section seven,
article five, chapter forty-eight-a of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended; to amend and reenact sections twelve, fourteen, fifteen, sixteen, seventeen, and twenty-four, article five, chapter sixteen of said code; to further amend said article five by adding thereto a new section, designated section eighteen-b; to amend and reenact sections one, fifteen, fifteen-a, twenty-seven and thirty-three, article two, chapter forty-eight; to further amend said article two by adding thereto a new section, designated section fifteen-b; to amend and reenact sections two and seven, article two; sections one, two, three, six and eight, article three; sections one, two, three, four, five, six, seven, eight, nine, and ten, article four, all of chapter forty-eight-a of said code; to further amend said article four by adding thereto two new sections, designated sections two-a and four-a; to amend and reenact sections one and three, article five; sections five and six, article six; and section fourteen, article seven, all of said chapter forty-eight-a; and to amend and reenact section four, article five, chapter fifty-seven of said code, all relating to the enforcement of support obligations generally; requiring parents to furnish social security account numbers in the administration of laws involving the issuance of birth certificates; limiting the use of social security numbers made available by the state registrar of vital statistics; defining certain terms relating to domestic relations; prescribing when prenuptial agreements are void; describing the relief which may be granted upon
ordering a divorce or annulment or granting a decree of separate maintenance; providing an additional basis for revising or altering a child support order; providing for withholding from income of amounts due as support; authorizing the family law master to open and inspect sealed court files; providing that the giving of incorrect information is false swearing; describing legislative intent; describing the responsibilities of the child advocate office; removing mediation and counseling and the enforcement of custody and visitation as responsibilities of the child advocate office; within existing appropriations, director to install computers in the office of each children's advocate; establishing the position of general counsel for the child advocate office; clarifying the duties of the children's advocate as regards the supervision of employees and the exercise of professional judgment; providing for the temporary reassignment of children's advocates; eliminating the requirement that the children's advocate investigate domestic relations cases; providing for periodic review of support orders; establishing a minimum salary for the position of children's advocate; exempting certain family law masters from appointments in indigent cases; redistributing the family law masters geographically; providing for referral of matters to a family law master; describing the matters to be heard by a family law master and fixing the fees for hearings; describing the powers of a master presiding at a hearing; providing for duplicate copies of electronic recordings of hearings and the preparation of transcripts; establishing procedures to be used in case of contemptuous acts or failures to act before a master; providing for recommended orders and findings of fact and conclusions of law by a master; setting forth a form of notice of recommended order; describing orders to be entered exclusively by the circuit court; establishing procedures for review by the circuit court of a master's recommended order; providing for the filing of an answer in opposition to a petition for review; providing for withholding from income of amounts payable as support; requiring a parent to furnish a social security account number in connection with a voluntary acknowledgment of paternity; and
empowering a family law master to order the issuance of a subpoena duces tecum.

Be it enacted by the Legislature of West Virginia:

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

Chapter
48. Domestic Relations.
48A. Enforcement of Family Obligations.
57. Evidence and Witnesses.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally.
§16-5-14. Delayed registration of births.
§16-5-16. Court reports of adoption.
§16-5-17. Court reports of determination of paternity.
§16-5-18b. Limitation on use of social security numbers.
§16-5-24. Correction and amendment of vital records.

§16-5-12. Birth registration generally.

1. (a) A certificate of birth for each live birth which
occurs in this state shall be filed with the local registrar of the district in which the birth occurs within seven days after such birth and shall be registered by such registrar if it has been completed and filed in accordance with this section. When a birth occurs in a moving conveyance, a birth certificate shall be filed in the district in which the child is first removed from the conveyance. When a birth occurs in a district other than where the mother resides, a birth certificate shall be filed in the district in which the child is born and in the district in which the mother resides.

(b) When a birth occurs in an institution, the person in charge of the institution or his designated representative shall obtain the personal data, prepare the certificate, secure the signatures required for the certificate and file it with the local registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required for the certificate within five days after the birth.

(c) When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth, or in the absence of such a person,

(2) Any other person in attendance at or immediately after the birth, or in the absence of such a person,

(3) The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

(d) If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

(e) If the mother was not married either at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written
(f) Either of the parents of the child shall sign the certificate of live birth to attest to the accuracy of the personal data entered thereon, in time to permit its filing within the seven days prescribed above.

(g) In order that each county may have a complete record of the births occurring in said county, the local registrar shall transmit each month to the county clerk of his county the copies of the certificates of all births occurring in said county, from which copies the clerk shall compile a record of such births and shall enter the same in a systematic and orderly way in a well-bound register of births, which said register shall be a public record: Provided, That such copies and register shall not state that any child was either legitimate or illegitimate.

The form of said register of births shall be prescribed by the state registrar of vital statistics.

(h) On and after the first day of November, one thousand nine hundred ninety, in addition to the personal data furnished for the certificate of birth issued for a live birth in accordance with the provisions of this section, a person whose name is to appear on such certificate of birth as a parent shall contemporaneously furnish to the person preparing and filing the certificate of birth the social security account number (or numbers, if the parent has more than one such number) issued to the parent. A record of the social security number or numbers shall be filed with the local registrar of the district in which the birth occurs within seven days after such birth, and the local registrar shall transmit such number or numbers to the state registrar of vital statistics in the same manner as other personal data is transmitted to the state registrar.

§16-5-14. Delayed registration of births.

(a) When the birth of a person born in this state has not been registered within the time period provided in
section twelve of this article, a certificate may be filed in accordance with a legislative rule promulgated by the state board of health in accordance with the provisions of chapter twenty-nine-a of this code. Such certificate shall be registered subject to such evidentiary requirements as the state board of health shall by rule prescribe to substantiate the alleged facts of birth.

(b) Certificates of birth registered one year or more after the date of occurrence shall be marked “Delayed” and shall show on their face the date of the delayed registration.

(c) A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

(d) (1) When an applicant does not submit the minimum documentation required in the rules for delayed registration or when the state registrar of vital statistics finds reason to question the validity or adequacy of the certificate or the documentary evidence, the state registrar of vital statistics shall not register the delayed certificate and shall advise the applicant in writing of the reasons for this action.

(2) The state board of health may by legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code provide for the dismissal of an application which is not actively prosecuted.

(e) On and after the first day of November, one thousand nine hundred ninety, in addition to the required documentation and other data furnished in an application for a delayed registration of birth in accordance with the provisions of this section, a person whose name is to appear on the certificate of birth as a parent shall contemporaneously furnish with the application the social security account number (or numbers, if the parent has more than one such number) issued to the parent.


(a) If a delayed certificate of birth is refused under
the provisions of section fourteen of this article, a
petition may be filed in the circuit court of the county
in which the petitioner resides or in the circuit court of
Kanawha County for an order establishing a record of
the date and place of the birth and the parentage of the
person whose birth is to be registered.

(b) Such petition shall allege:

1. That the person for whom a delayed registration
   of birth is sought was born in this state;

2. That no record of birth of such person can be
   found in the office of the state or the local custodian of
   birth records;

3. That diligent efforts by the petitioner have failed
   to obtain the evidence required in accordance with
   section fourteen of this article and of any rules and
   regulations adopted and promulgated thereunder;

4. That the state registrar of vital statistics has
   refused to register a delayed certificate of birth; and

5. Such other allegations as may be required by the
court.

(c) The petition shall be accompanied by a copy of the
statement of reasons of the registration official made in
accordance with subsection (d)(1), section fourteen of
this article and by all documentary evidence which was
submitted to the registration official in support of such
registration.

(d) The court shall fix a time and place for hearing
the petition and shall require that the petitioner give the
registration official who refused to register the petition-
er's delayed certificate of birth not less than twenty
days' notice of said hearing. Such official, or his
authorized representative, may appear and testify in the
proceeding.

(e) If the court finds from the evidence presented that
the person for whom a delayed certificate of birth is
sought was born in this state, it shall make findings as
to the place and date of birth, parentage, and such other
findings as the case may require and shall issue an order setting forth the information required under the provisions of this article to establish a record of birth. This order shall include the birth date to be registered, a summary statement of the evidence presented, and the date of the court's action.

(f) The clerk of the court shall forward each such order to the state registrar of vital statistics not later than the tenth day of the calendar month following the month in which it was entered. Such order shall be registered by the state registrar of vital statistics and shall constitute the record of birth, from which copies may be issued in accordance with the provisions of this article.

(g) Any judgment shall be final unless reversed, vacated or modified on appeal, and any appeal shall be sought in the manner and within the time provided by law for appeals in other civil cases.

(h) On and after the first day of November, one thousand nine hundred ninety, in addition to the evidence presented to establish a record of birth in accordance with the provisions of this section, a person whose name is to appear on the delayed certificate of birth as a parent shall furnish to the clerk of the circuit court the social security account number (or numbers, if the parent has more than one such number) issued to the parent. A record of the social security number or numbers shall be forwarded to the state registrar of vital statistics along with the order establishing a record of birth, as provided for in subsection (f) of this section.

§16-5-16. Court reports of adoption.

(1) In conformance with the provisions of section ten, article four, chapter forty-eight of this code, any court in this state entering an order of adoption shall require the preparation by the clerk of the court of a certificate of adoption on a form prescribed and furnished by the state registrar of vital statistics. Such certificate shall include the factual information described in section ten, article four, chapter forty-eight of this code; shall provide such additional information as may be required
under legislative rules duly adopted pursuant to this
article to establish a new certificate of birth of the
person adopted; shall identify the order of adoption; and
shall be certified by the clerk of court.

(b) Information in the possession of the petitioner
necessary to prepare the certificate of adoption shall be
pleaded in the petition for adoption or shall be furnished
to the clerk of the court by the petitioner for adoption
at the time the petition is filed. Any social or welfare
agency or other person concerned with the adoption
shall supply the petitioner with such information in the
possession of such agency or person as may be necessary
to complete the certificate.

(c) Whenever an adoption order or decree is amended
or vacated, the clerk of the court shall prepare a
certificate thereof, which shall include such facts as are
necessary to identify the original adoption certificate
and the facts amended in the adoption order or decree
which are required to properly amend the birth record.

(d) Not later than the tenth day of each calendar
month, the clerk of the court shall forward to the state
registrar of vital statistics a report of all orders or
decrees of adoption and of annulments or amendments
thereof, entered in the preceding month, together with
such related certificates and reports as may be required
under the provisions of this article.

(e) When the state registrar of vital statistics shall
receive a record of adoption or of an annulment or an
amendment of an order or decree of adoption from a
court for a person born outside of this state, such record
shall be forwarded to the appropriate registration
authority in the state of birth.

(f) On and after the first day of November, one
thousand nine hundred ninety, in addition to the
information pleaded or furnished in accordance with the
provisions of subsection (b) of this section, each person
whose name is to appear on the certificate of adoption
as a parent, whether as an adoptive parent or as a
natural parent who joins in the adoption without
relinquishing parental rights, shall furnish to the clerk
§16-5-17. Court reports of determination of paternity.
(a) Whenever a judgment has been entered determining the paternity of a child, the clerk of the court shall prepare a certificate on a form prescribed and furnished by the state registrar of vital statistics. The certificate shall include such facts as are necessary to locate and identify the certificate of birth of the person whose paternity is determined; shall provide information necessary to establish a new certificate of birth of the person whose paternity is determined; and shall identify the action and be certified by the clerk of court.
(b) Not later than the tenth day of each calendar month, the clerk of the court shall forward to the state registrar of vital statistics certificates of paternity entered in the preceding month, together with such related reports as the state registrar of vital statistics shall require.
(c) On and after the first day of November, one thousand nine hundred ninety, in addition to providing the information necessary to establish a new certificate of birth of the person whose paternity has been determined, in accordance with the provisions of subsection (a) of this section, a person whose name is to appear on the certificate of paternity as a parent shall furnish to the clerk of the circuit court the social security account number (or numbers, if the parent has more than one such number) issued to the parent. A record of the social security number or numbers shall be forwarded to the state registrar of vital statistics along with the certificate of paternity, as provided for in subsection (b) of this section.
§16-5-18b. Limitation on use of social security numbers.
(a) A social security account number obtained in
accordance with the provisions of this article with
respect to the filing of (1) a certificate of birth, (2) an
application for a delayed registration of birth, (3) a
judicial order establishing a record of birth, (4) an
adoption order or decree, or (5) a certificate of paternity
shall not be transmitted to a clerk of the county
commission. Such social security account number shall
not appear upon the public record of the register of
births or upon any certificate of birth registration issued
by the state registrar, local registrar, county clerk or
other issuing authority, if any. Such social security
account numbers shall be made available by the state
registrar to the child advocate office upon its request,
to be used solely in connection with the enforcement of
child support orders.

(b) A parent who desires not to furnish a social
security account number as required by the provisions
of this article or section six, article six, chapter forty-
eight-a of this code shall file with the person responsible
for obtaining personal data from the parent, a request
that he or she not be required to furnish such number.
The request shall be made on a form prescribed by the
state registrar of vital statistics or in a substantially
similar instrument, and shall set forth the reasons that
the parent declines or is unable to furnish such number.
Supplies of a form for the request shall be made
available to hospitals, circuit clerks, and other persons
responsible for obtaining personal data from parents,
and shall be provided to any parent who states that he
or she desires not to be required to furnish such number.
A request, when received, shall be transmitted in the
same manner as a record of a social security account
number. The board of health shall promulgate legisla-
tive rules in accordance with the provisions of chapter
twenty-nine-a of this code which shall establish the
procedural means and substantive criteria by which the
state registrar may determine whether there exists good
cause for not requiring the furnishing of such number.
In proposing the promulgation of such rules, the board
of health shall give due consideration to related
regulations prescribed by the secretary of health and
human services of the United States.
§16-5-24. Correction and amendment of vital records.

(a) A certificate or record registered pursuant to this article may be amended only in accordance with the provisions of this article and rules and regulations duly adopted thereunder.

(b) A certificate that is amended under this section shall be marked "amended," except as hereinafter provided in this subsection and in subsection (d) of this section. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The state board of health shall prescribe by rule and regulation the conditions under which additions or minor corrections shall be made to birth certificates within one year after the date of birth without the certificate being considered or marked as amended. The state board of health shall also prescribe by legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code a simplified procedure for the correction of any certificate or record registered pursuant to this article which is deficient in any particular, including, but not limited to, the omission or misspelling of a first name, and such rule and regulation shall specify when and under what circumstances a certificate or record so corrected shall be considered or marked as amended.

(c) Upon receipt of a certified copy of a court order of a court of competent jurisdiction changing the name of a person born in this state, which order was made and entered in a proceeding brought for that purpose, and upon request of such person or his parent, guardian, or legal representative, the state registrar of vital statistics shall amend the certificate of birth to reflect the new name.

(d) Upon request, and upon receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents, the state registrar of vital statistics shall amend the certificate of birth to show such paternity if paternity is not shown on the
39 birth certificate. Upon request of both of the parents, 40 the surname of the child shall be changed on the 41 certificate to that of the father. Such certificate shall not 42 be marked “amended.”

43 (e) When a certificate is amended under this section, 44 the state registrar of vital statistics shall report the 45 amendment to the custodian of any permanent local 46 records and such record shall be amended accordingly.

47 (f) On and after the first day of November, one 48 thousand nine hundred ninety, in addition to providing 49 the information necessary to amend a certificate or 50 record in accordance with the provisions of this section, 51 a person whose name is to appear on the amended 52 certificate as a parent shall furnish to the person 53 receiving the information the social security account 54 number (or numbers, if the parent has more than one 55 such number) issued to the parent. A record of the social 56 security number or numbers shall be forwarded to the 57 state registrar of vital statistics along with the informa-
58 tion required for the amended certificate.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE
MAINTENANCE.

§48-2-1. Definitions.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of
separate maintenance.


§48-2-15b. Withholding from income on and after November 1, 1990.

§48-2-27. Sealing by clerk of evidence and pleadings.

§48-2-33. Disclosure of assets required.

§48-2-1. Definitions.

1 (a) “Alimony” means the allowance which a person 2 pays to or in behalf of the support of his or her spouse 3 or divorced spouse while they are separated or after they 4 are divorced. The payment of alimony may be required 5 by court order or by the terms of a separation agree-
6 ment. Alimony may be paid in a lump sum or paid in 7 installments as periodic alimony. Alimony includes 8 temporary alimony as that term is used in section 9 thirteen of this article, as well as alimony as that term
(b) "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.

(c) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments 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.

(d) "Income" means any of the following:

1. Commissions, earnings, salaries, wages, and other income due or to be due in the future to an individual from his employer and successor employers;

2. 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, and workers' compensation;

3. 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
(e) "Marital property" means:

(1) 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 beneficial, 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 subsection (f) of this section; and

(2) The amount of any increase in value in the separate property of either of the parties to a marriage, which increase results from (A) 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 (B) work performed by either or both of the parties during the marriage.

The definitions of "marital property" contained in this subsection and "separate property" contained in subsection (f) of 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.

(f) "Separate property" means:

(1) Property acquired by a person before marriage; or
(2) Property acquired by a person during marriage in exchange for separate property which was acquired before the marriage; or

(3) 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

(4) Property acquired by a party during marriage by gift, bequest, devise, descent or distribution; or

(5) 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; and

(6) Any increase in the value of separate property as defined in subdivision (1), (2), (3), (4) or (5) of this subsection which is due to inflation or to a change in market value resulting from conditions outside the control of the parties.

(g) "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.

(h) "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 subsection (b) 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.
§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 and child support are to be ordinarily made from a party's employment income and other recurring earnings, but in cases where the employment income and other recurring earnings are not sufficient to adequately provide for payments of alimony and child support, the court may, upon specific findings set forth in the order, order the party required to make such payments to make the same from the corpus of his or her separate estate. An award of such relief 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 addition, the court may, in its discretion, make such further order as it shall deem expedient, concerning the grant of reasonable visitation rights to any grandparent or grandparents of the minor children upon application, if the grandparent or grandparents are related to such minor child through a party:

(A) Whose whereabouts are unknown, or

(B) Who did not answer or otherwise appear and defend the cause of action.

(2) The court may require either party to pay child support in the form of periodic installments for the maintenance of the minor children of the parties.
(3) 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 and the minor children of the parties: 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. If there is no such existing policy or policies, the court shall order such health care insurance coverage to be paid for by the noncustodial parent, if the court determines that such health care insurance coverage is available to the noncustodial parent at a reasonable cost. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, shall be deemed to be alimony, child support 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 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: 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.

(4) As an incident to requiring the payment of alimony or child support, 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 where 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, payments for utility services, property taxes, insurance coverage, or other expenses or charges reasonably necessary for the use and occupancy of the marital domicile. Payments made to a third party pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony, child support or installment payments for the distribution of marital property, in such proportion as the court shall direct: 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. 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.

(5) 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 subsection 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) Where the pleadings include a specific request for specific property or raise issues concerning the equita-
ble 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.

(7) Unless a contrary disposition be found appropriate and 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 movant 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.

(8) The court may enjoin either party from the 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.

(9) 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) In any case where 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) In any case where 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) At any time after the entry of an order pursuant to the provisions of this section, the court may, upon the verified petition of either of the parties, revise or alter such order concerning the maintenance of the parties, or either of them, and make a new order concerning the same, as the altered circumstances or needs of the parties may render necessary to meet the ends of justice. The court may also from time to time afterward, on the verified petition 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 such order concerning the custody and support of the children, and make a new order concerning the same, as the circumstances of the parents or other proper person or persons and the benefit of the children may require: Provided, 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 section eight, article two, chapter forty-eight-a of this code. In granting relief under this subsection, the court may, where 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) In every case where 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 party or to cease in such event. Where 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 party or is to cease, or where the parties
have not entered into a separation agreement and
alimony is to be awarded, the court shall specifically
state as a part of its order whether such payments of
alimony are to be continued beyond the death of the
payor party or cease.

(g) In every case where a separation agreement is the
basis for an award of alimony, the court, in approving
the agreement, shall examine the agreement to ascer­
tain whether it clearly provides for alimony to continue
beyond the remarriage of the payee party or to cease in
such event. Where 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 party or is to cease, or
where the parties have not entered into a separation
agreement and alimony is to be awarded, the court shall
specifically state as a part of its order whether such
payments of alimony are to be continued beyond the
remarriage of the payee party or cease.

(h) In addition to the statement provided for in
subsection (d), section thirteen of this article and in
addition or in lieu of 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 deemed to be appropriate
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 deteriora­
tion of the marital relationship. However, alimony shall
not be awarded in any case where 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.

§48-2-15a. Withholding from income prior to November
1, 1990.

(a) From the first day of July, one thousand nine
hundred eighty-six, until the thirty-first day of October,
one thousand nine hundred ninety, both inclusive, every
order entered or modified under the provisions of this
article which requires the payment of child support or
spousal support shall include a provision for automatic
withholding from income of the obligor if arrearages in
such support occur, in order to facilitate income
withholding as a means of collecting support when such
arrearages occur.

(b) Every such order as described in subsection (a)
above shall contain or be considered to contain language
authorizing income withholding to commence without
further court action:
(1) When the support payments required by such order are thirty days or more in arrears if the order requires payments to be made in monthly installments;

(2) When the support payments required by such order are twenty-eight days or more in arrears if the order requires payments to be paid in weekly or bi-weekly installments; or

(3) When the obligor requests the child advocate office to commence income withholding.

(c) For the purposes of this section, the number of days support payments are in arrears shall be considered to be the total cumulative number of days during which payments required by a court order have been delinquent, whether or not such days are consecutive.

(d) The supreme court of appeals shall make available to the circuit courts standard language to be included in all such orders, so as to conform such orders to the applicable requirements of state and federal law regarding the withholding from income of amounts payable as support.

(e) Every support order entered by a circuit court of this state prior to the first day of July, one thousand nine hundred eighty-six, shall be considered to provide for an order of income withholding by operation of law, notwithstanding the fact that such support order does not in fact provide for an order of withholding.

§48-2-15b. Withholding from income on and after November 1, 1990.

(a) On and after the first day of November, one thousand nine hundred ninety, every order entered or modified under the provisions of this article which requires the payment of child support or spousal support shall include a provision for automatic withholding from income of the obligor, in order to facilitate income withholding as a means of collecting support.

(b) Every such order as described in subsection (a) of this section shall contain language authorizing income withholding to commence without further court action, as follows:
(1) The order shall provide that income withholding will begin immediately, without regard to whether there is an arrearage, (A) when a child for whom support is ordered is included or becomes included in a grant of assistance from the division of human services or a similar agency of a sister state for aid to families with dependent children benefits, medical assistance only benefits, or foster care benefits; or (B) when the support obligee has applied for services from the child advocate office or the support enforcement agency of another state or is otherwise receiving services from the child advocate office as provided for in chapter forty-eight-a of this code. Such order may provide that income withholding shall not begin immediately in any case where one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or in any case where there is filed with the court a written agreement between the parties which provides for an alternative arrangement and the agreement has been filed with the court.

(2) The order shall also provide that income withholding will begin immediately upon the occurrence of any of the following:

(A) When the support payments required by such order are thirty days or more in arrears if the order requires payments to be made in monthly installments;

(B) When the support payments required by such order are twenty-eight days or more in arrears if the order requires payments to be paid in weekly or bi-weekly installments;

(C) When the obligor requests the child advocate office to commence income withholding; or

(D) When the obligee requests that such withholding begin, if the request is approved by the court in accordance with procedures and standards established by rules and regulations promulgated by the director of the child advocate office.

(c) For the purposes of this section, the number of
days support payments are in arrears shall be considered to be the total cumulative number of days during which payments required by a court order have been delinquent, whether or not such days are consecutive.

(d) The supreme court of appeals shall make available to the circuit courts standard language to be included in all such orders, so as to conform such orders to the applicable requirements of state and federal law regarding the withholding from income of amounts payable as support.

(e) Every support order entered by a circuit court of this state prior to the first day of November, one thousand nine hundred ninety, shall be considered to provide for an order of income withholding, by operation of law, which complies with the provisions of this section, notwithstanding the fact that such support order does not in fact provide for such order of withholding.

§48-2-27. Sealing by clerk of evidence and pleadings.

When a judgment order is entered in any action for annulment of marriage or for divorce, the clerk shall immediately seal in a package all pleadings, except the orders of the court, all the written testimony, exhibits to the testimony, the stenographic notes or other recordings of the testimony, if any were taken, the commissioner's report, and all other evidence, and the same shall not be again opened except upon written permission of the court: Provided, That a family law master before whom a subsequent matter in the same action is pending may open and inspect the pleadings, testimony, exhibits, notes and recordings, reports, evidence and all other contents of the sealed court file without the written permission of the court.

§48-2-33. Disclosure of assets required.

(a) In addition to any discovery ordered by the court pursuant to rule eighty-one of the rules of civil procedure, the court may, or upon pleadings or motion of either party, the court shall, require each party to furnish, on such standard forms as the court may
require, full disclosure of all assets owned in full or in
part by either party separately or by the parties jointly.
Such disclosure may be made by each party individually
or by the parties jointly. Assets required to be disclosed
shall include, but shall not be limited to, real property,
savings accounts, stocks and bonds, mortgages and
notes, life insurance, interest in a partnership or
corporation, tangible personal property, income from
employment, future interests whether vested or non-
vested, and any other financial interest or source. The
court may also require each party to furnish, on the
same standard form, information pertaining to all debts
and liabilities of the parties. The form used shall contain
a statement in conspicuous print that complete disclo-
sure of assets and debts is required by law and
deliberate failure to provide complete disclosure as
ordered by the court constitutes false swearing. The
court may on its own initiative and shall at the request
of either party require the parties to furnish copies of
all state and federal income tax returns filed by them
for the past two years, and may require copies of such
returns for prior years.

(b) Disclosure forms required under this section shall
be filed within sixty days after the service of summons
or at such other time as ordered by the court. Information contained on such forms shall be updated
on the record to the date of hearing.

(c) Information disclosed under this section shall be
confidential and may not be made available to any
person for any purpose other than the adjudication,
appeal, modification or enforcement of judgment of an
action affecting the family of the disclosing parties. The
court shall include in any order compelling disclosure
of assets such provisions as the court considers necessary
to preserve the confidentiality of the information
ordered disclosed.

(d) Upon the failure by either party timely to file a
complete disclosure statement as may be required by
this section, the court may accept the statement of the
other party as accurate.
(e) If any party deliberately or negligently fails to disclose information which may be required by this section and in consequence thereof any asset or assets with a fair market value of five hundred dollars or more is omitted from the final distribution of property, the party aggrieved by such nondisclosure may at any time petition a court of competent jurisdiction to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee, such trust to include such terms and conditions as the court may determine. The court shall impose the trust upon a finding of a failure to disclose such assets as required under this section.

(f) Any assets with a fair market value of five hundred dollars or more which would be considered part of the estate of either or both of the parties if owned by either or both of them at the time of the action, but which was transferred for inadequate consideration, wasted, given away or otherwise unaccounted for by one of the parties, within five years prior to the filing of the petition or length of the marriage, whichever is shorter, shall be presumed to be part of the estate and shall be subject to the disclosure requirement contained in this section. With respect to such transfers the spouse shall have the same right and remedies as a creditor whose debt was contracted at the time the transfer was made under section three, article one, chapter forty of this code. Transfers which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth.

(g) A person who knowingly provides incorrect information pursuant to the provisions of this section is guilty of false swearing.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article
2. West Virginia Child Advocate Office.
3. Children's Advocate.
ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-2. Legislative purpose and intent; responsibility of the child advocate office.

(a) This article is enacted for the purpose of creating a child advocate office which will focus on the vital issues of child support, spousal support, and the establishment of paternity, inasmuch as such issues are properly within the jurisdiction of the state of West Virginia. The Legislature of the state of West Virginia, in creating the child advocate office, recognizes the seriousness of family law issues as they affect the health and welfare of the children of this state. The Legislature intends, by the enactment of this article and through the creation of this office, to specifically assign the highest priority to these issues. It is the sense of the Legislature that there must be a state office which, as its primary function, protects and promotes the best interests of children; which recognizes the rights and obligations of all persons involved in family law issues; and which has the authority and the means to resolve family law issues fairly and efficiently. Through the establishment of the child advocate office the Legislature intends to create an impetus and a mechanism for dealing with the varied problems associated with support enforcement, thereby enhancing the health and welfare of our state's children and their families.

(b) In order to carry out the purposes and intent of the Legislature, the child advocate office shall have, as its primary responsibilities, the following:

(1) The enforcement of support obligations owed by a parent to his or her child or children;

(2) The enforcement of support obligations owed by an individual to his or her spouse or former spouse;
(3) Locating parents or spouses who owe a duty to pay support;

(4) Establishing paternity on behalf of minors whose paternal parentage has not been acknowledged by the father or otherwise established by law;

(5) Obtaining court orders for child and spousal support; and

(6) Assuring that the assistance and services of the office required to be provided under the provisions of this chapter will be available to all individuals for whom such assistance is required or requested.

§48A-2-7. Powers and duties of the director; advisory council.

(a) The director may promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code where such rules are required to implement the provisions of this chapter.

(b) The director shall annually prepare a proposed budget for the next fiscal year, and submit such budget to the commissioner. Such budget shall include all sums necessary to support the activities of the child advocate office.

(c) In addition to any other duties required by this chapter, the director shall:

(1) Develop and recommend guidelines for the conduct, operations and procedures of the office and his or her employees, including, but not limited to, the following:

(A) Caseload and staffing standards for employees who perform investigation and recommendation functions, enforcement functions and clerical functions.

(B) Orientation programs for clients of the office.

(C) Public educational programs regarding domestic relations law and community resources, including financial and other counseling, and employment opportunities.
(D) Model pamphlets and procedural forms, which shall be distributed to each local office serving clients.

(2) Provide training programs for the children’s advocates and other employees of the office, to better enable them to carry out the duties described in this chapter.

(3) Gather and monitor relevant statistics.

(4) Develop standards and procedures for the transfer of part or all of the responsibilities for a case from one office to another in situations considered appropriate.

(5) Subject to appropriation of funds by the Legislature, install in the office of each children’s advocate, adequate computer hardware and software to enable the advocate to utilize word processing and other data processing functions in the preparation of pleadings and other documents required for the proper discharge of the duties of the office.

(d) The commissioner of the division of human services shall appoint a nine-person advisory committee, serving without compensation except as provided in subsection (e) of this section, composed of the following:

(1) Three public members who are eligible for services with an office of the children’s advocate;

(2) Three attorneys who are members of the West Virginia state bar with experience in domestic relations law, not more than two of whom may be employees of the department of health and human resources: Provided, That one of the attorneys appointed shall be a children’s advocate selected by the children’s advocates throughout the state; and

(3) Three human service professionals who provide family counseling, not more than two of whom may be employees of the department of health and human resources.

Of the nine members initially appointed, one public member, one attorney and one professional shall be
appointed for a term of one year; one public member, one attorney and one professional shall be appointed for a term of two years; and one public member, one attorney and one professional shall be appointed for a term of three years. After the expiration of the initial terms, appointments thereafter shall be made for terms of three years. The commissioner shall fill any vacancies resulting from death or resignation by appointment for the unexpired term. Members of the advisory council may be reappointed.

(e) The advisory committee established under subsection (d) of this section shall advise the director in the performance of his or her duties under this section. Advisory committee members shall be reimbursed for their actual expenses for mileage, meals, and, if necessary, lodging.

(f) The director shall appoint general counsel for the child advocate office to supervise and assist the children's advocates in the performance of their professional, nonadministrative duties and to promote uniformity in, and increase the quality of, legal services provided by children's advocates throughout the state. Such general counsel shall also serve as counsel to the director. A person appointed as general counsel shall be a member in good standing of the West Virginia state bar. Compensation and expenses of the general counsel shall be fixed by the director and paid by the child advocate office. The position of general counsel shall be a position in the classified service.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-1. Purposes; how article to be construed.
§48A-3-2. Placement of children's advocates throughout the state; supervision; office procedures.
§48A-3-3. Duties of the children's advocate.
§48A-3-6. Investigations of support orders; notice and hearing upon modification; petition for change.
§48A-3-8. Compensation; expenses.

§48A-3-1. Purposes; how article to be construed.

(a) The purposes of this article are:

(1) To enumerate and describe the functions and
duties of the children's advocate as an employee of the child advocate office;

(2) To ensure that procedures followed by the children's advocate will protect the best interests of children in domestic relations matters; and

(3) To compel the enforcement of support orders, thereby ensuring that persons legally responsible for the care and support of children assume their legal obligations and reduce the financial cost to this state of providing public assistance funds for the care of children.

(b) This article shall be construed to facilitate the resolution of domestic relations matters.

§48A-3-2. Placement of children's advocates throughout the state; supervision; office procedures.

(a) The child advocate office shall employ twenty-one employees in the position of children's advocate, and the offices of the children's advocates shall be distributed geographically so as to provide an office for each of the following areas of the state:

(1) The counties of Brooke, Hancock and Ohio;

(2) The counties of Marshall, Tyler and Wetzel;

(3) The counties of Pleasants, Ritchie, Wirt and Wood;

(4) The counties of Calhoun, Jackson and Roane;

(5) The counties of Mason and Putnam;

(6) The county of Cabell;

(7) The counties of McDowell and Wyoming;

(8) The counties of Logan and Mingo;

(9) The county of Kanawha;

(10) The county of Raleigh;

(11) The counties of Mercer, Monroe and Summers;

(12) The counties of Fayette and Nicholas;

(13) The counties of Greenbrier and Pocahontas;
(14) The counties of Braxton, Clay, Gilmer and Webster;

(15) The counties of Doddridge, Harrison, Lewis and Upshur;

(16) The counties of Marion and Taylor;

(17) The counties of Monongalia and Preston;

(18) The counties of Barbour, Randolph and Tucker;

(19) The counties of Grant, Hampshire, Hardy, Mineral and Pendleton;

(20) The counties of Berkeley, Jefferson and Morgan;

and

(21) The counties of Boone, Lincoln and Wayne.

(b) Each children's advocate shall be appointed by the director of the child advocate office. The children's advocates shall be duly qualified attorneys licensed to practice in the courts of this state. Children's advocates shall be exempted from the appointments in the indigent cases which would otherwise be required pursuant to article twenty-one, chapter twenty-nine of this code.

(c) Nothing contained herein shall prohibit the director from temporarily assigning, from time to time as caseload may dictate, a children's advocate from one geographical area to another geographical area.

(d) The children's advocate is an employee of the child advocate office.

§48A-3-3. Duties of the children's advocate.

(a) The children's advocate shall supervise and direct the secretarial, clerical and other employees in his or her office in the performance of their duties as such performance affects the delivery of legal services. The children's advocate will provide appropriate instruction and supervision to employees of his or her office who are nonlawyers, concerning matters of legal ethics and matters of law, in accordance with applicable state and federal statutes, rules, and regulations.
(b) In accordance with the requirements of rule 5.4(c) of the rules of professional conduct as promulgated and adopted by the supreme court of appeals, the children's advocate shall not permit a nonlawyer who is employed by the department of health and human resources in a supervisory position over the children's advocate to direct or regulate the advocate's professional judgment in rendering legal services to clients in accordance with the provisions of this chapter; nor shall any nonlawyer employee of the department attempt to direct or regulate the advocate's professional judgment.

(c) The children's advocate shall make available to the public an informational pamphlet, designed in consultation with the director. The informational pamphlet shall explain the procedures of the court and the children's advocate; the duties of the children's advocate; the rights and responsibilities of the parties; and the availability of human services in the community. The informational pamphlet shall be provided as soon as possible after the filing of a complaint or other initiating pleading. Upon request, a party to a domestic relations proceeding shall receive an oral explanation of the informational pamphlet from the office of the children's advocate.

(d) The children's advocate shall act to establish the paternity of every child born out of wedlock for whom paternity has not been established, when such child's primary caretaker is an applicant for or recipient of aid to families with dependent children, and when such primary caretaker has assigned to the division of human services any rights to support for the child which might be forthcoming from the putative father: Provided, That if the children's advocate is informed by the secretary of the department of health and human resources or his or her authorized employee that it has been determined that it is against the best interest of the child to establish paternity, the children's advocate shall decline to so act. The children's advocate, upon the request of any primary caretaker of a child born out of wedlock, regardless of whether such primary caretaker is an applicant or recipient of aid to families with dependent
children, shall undertake to establish the paternity of such child.

(e) The children's advocate shall undertake to secure support for any individual who is receiving aid to families with dependent children when such individual has assigned to the division of human services any rights to support from any other person such individual may have: Provided, That if the children's advocate is informed by the secretary of the department of health and human resources or his or her authorized employee that it has been determined that it is against the best interests of a child to secure support on the child's behalf, the children's advocate shall decline to so act. The children's advocate, upon the request of any individual, regardless of whether such individual is an applicant or recipient of aid to families with dependent children, shall undertake to secure support for the individual. If circumstances require, the children's advocate shall utilize the provisions of article seven of this chapter and any other reciprocal arrangements which may be adopted with other states for the establishment and enforcement of support obligations, and if such arrangements and other means have proven ineffective, the children's advocate may utilize the federal courts to obtain and enforce court orders for support.

(f) The children's advocate shall pursue the enforcement of support orders through the withholding from income of amounts payable as support:

(1) Without the necessity of an application from the obligee in the case of a support obligation owed to an obligee to whom services are already being provided under the provisions of this chapter; and

(2) On the basis of an application for services in the case of any other support obligation arising from a support order entered by a court of competent jurisdiction.

(g) The children's advocate may decline to commence an action to obtain an order of support under the provisions of section one, article five of this chapter if
an action for divorce, annulment, or separate mainte-
nance is pending, or the filing of such action is
imminent, and such action will determine the issue of
support for the child: Provided, That such action shall
be deemed to be imminent if it is proposed by the
obligee to be commenced within the twenty-eight days
next following a decision by the children's advocate that
an action should properly be brought to obtain an order
for support.

(h) If the child advocate office, through the children's
advocate, shall undertake paternity determination
services, child support collection, or support collection
services for a spouse or former spouse upon the written
request of an individual who is not an applicant or
recipient of assistance from the division of human
services, the office may impose an application fee for
furnishing such services. Such application fee shall be
in a reasonable amount, not to exceed twenty-five
dollars, as determined by the director: Provided, That
the director may fix such amount at a higher or lower
rate which is uniform for this state and all other states
if the secretary of the federal department of health and
human services determines that a uniform rate is
appropriate for any fiscal year to reflect increases or
decreases in administrative costs. Any cost in excess of
the application fee so imposed may be collected from the
obligor who owes the child or spousal support obligation
involved.

§48A-3-6. Investigations of support orders; notice and
hearing upon modifications; petition for
change.

(a) In every case in which a final judgment containing
a child support order has been entered in a domestic
relations matter, the children's advocate shall once every
three years or upon receipt of a written request from
an obligee or an obligor made not more than once by
a party each two years, examine the records and conduct
any investigation considered necessary to determine
whether the child support amount should be increased
or decreased in view of a temporary or permanent
change in physical custody of the child which the court
has not ordered, increased need of the child or changed financial conditions, unless:

(1) If a child is being supported, in whole or in part, by assistance payments from the division of human services, the children's advocate has determined that such a review would not be in the best interests of the child and neither parent has requested a review;

(2) In the case of any other order, neither parent has requested a review.

(b) Within sixty days after receipt of a request under subsection (a), the office of the children's advocate shall complete its investigation and make any resulting recommendations and supporting documents available as required in section three of this article.

(c) Before a hearing on a proposed modification, the office shall notify both parties of the proposed modification and afford the parties an opportunity for review and comment.

(d) The office shall petition the court for modification of the amount of a child support order if modification is determined to be necessary under subsection (a). A written report and recommendation shall accompany the petition.

(e) As used in this section, "changed financial conditions" means increases or decreases in the resources available to either party from any source. Changed financial conditions includes, but is not limited to, the application for or receipt of any form of public assistance payments, unemployment compensation and workers' compensation.

§48A-3-8. Compensation; expenses.

The salary of a children's advocate shall be not less than thirty-five thousand dollars per year, and shall be fixed by the director, who shall take into consideration ability, performance of duty and experience. The compensation and expenses of the employees of the office and all operating expenses incurred by the office shall be fixed by the director and paid by the child advocate office.
ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-1. Appointment of family law masters; term of office; vacancy; qualifications; removal; compensation and expenses; budget; location of offices; matters to be heard by master; fees for hearings; notice of master’s hearing; content of notice; determination of issues by consent; hearing.

§48A-4-2. Hearing procedures.
§48A-4-2a. Acts or failures to act in the physical presence of family law masters.
§48A-4-3. Default orders; temporary orders.
§48A-4-4. Recommended orders.
§48A-4-4a. Form of notice of recommended order.
§48A-4-5. Orders to be entered by circuit court exclusively.
§48A-4-6. Circuit court review of master’s action or recommended order.
§48A-4-7. Procedure for review by circuit court.
§48A-4-8. Form of petition for review.
§48A-4-9. Answer in opposition to a petition for review.
§48A-4-10. Circuit court review of master’s recommended order.

1 (a) On or before the fifteenth day of September, one thousand nine hundred eighty-six, the governor shall appoint family law masters in such numbers and to serve such areas of the state as provided for under the provisions of this article, and such initial appointments of individuals as family law masters shall be for a term ending on the thirtieth day of June, one thousand nine hundred ninety. Thereafter, the length of the term of the office of family law master shall be four years, with terms commencing on the first day of July, one thousand nine hundred ninety, and on a like date in every fourth year thereafter, and ending on the thirtieth day of June, one thousand nine hundred ninety-four, and on a like date in every fourth year thereafter. Upon the expiration of his or her term, a family law master may continue to perform the duties of the office until his or her successor is appointed, or for sixty days after the date of the expiration of the master’s term, whichever is earlier. If from any cause a vacancy shall occur in the
office of family law master, the governor shall, within thirty days after such vacancy occurs, fill such vacancy by appointment for the unexpired term: Provided, That if the remaining portion of the unexpired term to be filled is less than one year, the governor may, in his discretion, simultaneously appoint an individual to the unexpired term and to the next succeeding full four-year term. An individual may be reappointed to succeeding terms as a family law master to serve in the same or a different region of the state.

(b) No individual may be appointed to serve as a family law master unless he or she is a member in good standing of the West Virginia state bar.

(c) Removal of a master during the term for which he or she is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability.

(d) 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. Family law masters who do not engage in the practice of criminal law shall be exempted from the appointments in indigent cases which would otherwise be required pursuant to article twenty-one, chapter twenty-nine of this code.

(e) All family law masters, and all necessary clerical and secretarial assistants employed in the offices of family law masters shall be deemed to be officers and employees in the judicial branch of state government. The director of the child advocate office and the commissioner of the division of human services shall enter into an agreement with the administrative office of the supreme court of appeals whereby the office and the division shall contract to pay the administrative office of the supreme court of appeals for the services of the family law masters required to be furnished under the provisions of this chapter which are not otherwise payable from the family law masters fund.
created under the provisions of section twenty-two, article two of this chapter.

Each county commission of this state shall enter into an agreement with the administrative office of the supreme court of appeals whereby the administrative office of the supreme court of appeals shall contract to pay to the county commission a reasonable amount as rent for premises furnished by the county commission to the family law master and its staff, which premises shall be adequate for the conduct of the duties required of such master under the provisions of this chapter.

(f) A family law master appointed under the provisions of this article shall receive as full compensation for his or her services an annual salary of thirty-five thousand dollars. The secretary-clerk of the family law master shall receive an annual salary of fifteen thousand dollars and shall be appointed by the family law master and serve at his or her will and pleasure. Disbursement of salaries shall be made by or pursuant to the order of the director of the administrative office of the supreme court of appeals.

(g) Family law masters serving under the provisions of this article 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 regulations as he or she may prescribe with the approval of the supreme court of appeals.

(h) The offices of the family law masters shall be distributed geographically so as to provide an office of the family law master for each of the following regions:

(1) The counties of Brooke, Hancock and Ohio;
(2) The counties of Marshall, Tyler and Wetzel;
(3) The counties of Pleasants, Ritchie, Wirt and Wood;
(4) The counties of Calhoun, Jackson and Roane;
(5) The counties of Mason and Putnam;
(6) The county of Cabell;
97 (7) The counties of McDowell and Wyoming;
98 (8) The counties of Logan and Mingo;
99 (9) The county of Kanawha;
100 (10) The county of Raleigh;
101 (11) The counties of Mercer and Summers;
102 (12) The counties of Fayette and Nicholas;
103 (13) The counties of Greenbrier, Pocahontas and Monroe;
104 (14) The counties of Braxton, Clay, Gilmer and Webster;
105 (15) The counties of Doddridge, Harrison, Lewis and Upshur;
106 (16) The counties of Marion and Taylor;
107 (17) The counties of Monongalia and Preston;
108 (18) The counties of Barbour, Randolph and Tucker;
109 (19) The counties of Grant, Hampshire, Hardy, Mineral and Pendleton;
110 (20) The counties of Berkeley, Jefferson and Morgan;
111 and
112 (21) The counties of Boone, Lincoln and Wayne.
113 The governor shall appoint two masters to the office
114 of the family law master for the region of Kanawha
115 County. In each of the other regions defined by this
116 subsection, the governor shall appoint one person as
117 family law master from such region. Nothing contained
118 herein shall prohibit the chief justice of the supreme
119 court of appeals from temporarily assigning, from time
120 to time as caseload may dictate, a family law master
121 from one geographical region to another geographical
122 region.
123 (i) A circuit court or the chief judge thereof shall
124 refer to the master the following matters for hearing to
125 be conducted pursuant to section two of this article:
126 Provided, That on its own motion or upon motion of a
party, the circuit judge may revoke the referral of a
particular matter to a master if the master is recused,
if the matter is uncontested, or for other good cause, or
if the matter will be more expeditiously and inexpensi-
vely heard by the circuit judge without substantially
affecting the rights of parties in actions which must be
heard by the circuit court:

(1) Actions to obtain orders of support brought under
the provisions of section one, article five of this chapter;

(2) All actions to establish paternity under the
provisions of article six of this chapter: Provided, That
all actions wherein either or both of the parties have
demanded a trial by jury of the law and the facts shall
be heard by the circuit court;

(3) All motions for pendente lite relief affecting child
custody, visitation, child support or spousal support,
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 master: Provided,
That if the circuit court determines, in its 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 court may decline to refer a
motion for support pendente lite to the family law
master;

(4) All petitions for modification of an order involving
child custody, child visitation, child support or spousal
support;

(5) 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 the 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;

(6) All actions wherein an obligor is contesting the
enforcement of an order to support through the with-
holding from income of amounts payable as support or is contesting an affidavit of accrued support, filed with a circuit clerk, which seeks to collect arrearages;

(7) All actions commenced under the provisions of article seven of this chapter or under the provisions of the revised uniform reciprocal enforcement of support act of any other state;

(8) Proceedings for the enforcement of support, custody, or visitation orders: Provided, That contempt actions shall be heard by a circuit judge.

(j) The initial fees for hearings before a master shall be paid before the commencement of the hearing, and additional hourly fees shall be paid at the conclusion of the hearing, unless a party is excused from payment thereof under the provisions of section one, article two, chapter fifty-nine of this code. Such initial fees may be paid at any time prior to such hearing, but shall not be required at the time the action is filed.

(k) Fees for hearings before a master shall be taxed as court costs, which costs may be assessed against either party or apportioned between the parties, in the discretion of the master. The assessment of court costs shall be made at the conclusion of the hearing and included as findings in each case of a master's recommended order. The fees for hearings before a master shall be as follows:

(1) For an action to establish an order of support, fifty dollars;

(2) For an action to establish paternity, one hundred dollars;

(3) For a motion for pendente lite relief affecting custody, visitation, child support or spousal support, fifty dollars;

(4) For a petition for modification of an order involving child custody, child visitation, child support or spousal support, fifty dollars: Provided, That if the matter is contested, the fee shall be fifty dollars for the first hour or any portion thereof, and thirty dollars per hour for each subsequent hour or any portion thereof;
(5) For an uncontested divorce action, fifty dollars;

(6) For a proceeding for the enforcement of an order, fifty dollars: Provided, That if the matter is contested, the fee shall be fifty dollars for the first hour or any portion thereof, and thirty dollars per hour for each subsequent hour or any portion thereof;

(7) For a contested divorce action matured for final hearing, fifty dollars for the first hour or any portion thereof, and thirty dollars per hour for each subsequent hour or any portion thereof.

(l) Persons entitled to notice of a master’s hearing shall be timely informed of:

(1) The time, place and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held; and

(3) The matters of fact and law asserted.

(m) The master shall give all interested parties opportunity for the submission and consideration of facts, arguments, offers of settlement or proposals of adjustment when time, the nature of the proceedings and the public interest permit. To the extent that the parties are unable to settle or compromise a controversy by consent, the master shall provide the parties a hearing and make a recommended order in accordance with the provisions of sections two and four of this article.

(n) The master who presides at the reception of evidence pursuant to section two of this article shall prepare the default order or make and enter the pendente lite order provided for in section three of this article, or make the recommended order required by section four of this article, as the case may be. Except to the extent required for disposition of ex parte matters as authorized by this chapter, a master may not consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; nor shall the master attempt to supervise or direct an employee or
agent engaged in the performance of investigative or
prosecuting functions for a prosecuting attorney, the
division of human services or any other agency or
political subdivision of this state.

§48A-4-2. Hearing procedures.

(a) This section applies, according to the provisions
thereof, to hearings required by section one of this
article to be conducted in accordance with this section.

(b) A master appointed under the provisions of section
one of this article shall preside at the taking of evidence.
The functions of the master shall be conducted in an
impartial manner. A master may at any time disqualify
himself or herself. Upon such disqualification, or upon
the filing in good faith of a timely and sufficient
affidavit of personal bias or other disqualification of a
master, the circuit court or the chief judge thereof may
appoint a temporary master or the circuit court may
receive the evidence and determine the matter.

(c) A 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 docu-
ments, 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 pre-trial 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 acknowledgements 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 four 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 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 master may adopt procedures for the submission of all or part of the evidence in written form.

(e) Hearings before a master shall be recorded electronically. When requested by either of the parties, a master shall provide a duplicate copy of the tape or other electronic recording medium of each hearing held. The party requesting the copy shall pay to the 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 four of this article, and
on payment of lawfully prescribed costs, shall be made
available to the parties. When a master's final recom-
mended 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.

§48A-4-2a. Acts or failures to act in the physical presence
of family law masters.

(a) If in the master's presence a party, witness or
other person conducts himself in a manner which would
constitute direct contempt if committed in the presence
of a circuit judge, the master shall halt any proceeding
which may be in progress and inform the person that
their conduct constitutes direct contempt and give notice
of the procedures and possible dispositions which may
result.

(b) (1) If a circuit judge is sitting in the same county
in which the conduct occurred, or is otherwise available,
the alleged contemnor shall be immediately taken before
the circuit judge. Disposition of these matters shall be
given priority over any other matters, with the excep-
tion of a criminal trial in progress.

(2) If a circuit judge is unavailable then the master
shall schedule a hearing before the circuit court and the
alleged contemnor shall be advised, on the record, of the
time and place of the hearing. The master may elect,
in his or her discretion, to obtain a warrant for the
arrest of the alleged contemnor from the magistrate
court on the charge of contempt with the matter to be
heard by the circuit court.
(c) At the hearing, the circuit court shall be advised of the charges, receive the evidence and rule in the same manner as would be appropriate if the conduct complained of occurred in the physical presence of a circuit judge. In addition to other sanctions the court may award attorney's fees and costs.

(d) Prior to or during any hearing before a master, if the master determines that a situation exists which warrants the presence of security during such hearing, the master shall inform the sheriff of the need for such security and the time and place of the hearing, and the sheriff shall assign a deputy to act as bailiff during such hearing.

§48A-4-3. Default orders; temporary orders.

(a) In any proceeding in which the amount of support is to be established, if the obligor has been served with notice of a hearing before a master and does not enter an appearance, the family law master shall prepare a default order for entry by the circuit judge, which order shall fix support in an amount at least equal to the amount paid as public assistance under section four, article three, chapter nine of this code, if the obligee or custodian receives public assistance, or in an amount at least equal to the amount that would be paid as public assistance if the obligee or custodian were eligible to receive public assistance, unless the family law master has sufficient information in the record so as to determine the amount to be fixed in accordance with the child support guidelines.

(b) A master who presides at a hearing under the provisions of section two of this article is authorized to make and enter pendente lite support and custody orders which, when entered, shall be enforceable and have the same force and effect under law as pendente lite support orders made and entered by a judge of the circuit court, unless and until such support orders are modified, vacated, or superseded by an order of the circuit court.

(c) All orders prepared by a master shall provide for automatic withholding from income of the obligor if
arrearages in support occur, if no such provision already exists in prior orders or if the existing order as it relates to withholding is not in compliance with applicable law.

§48A-4-4. Recommended orders.

(a) This section applies, according to the provisions thereof, when a hearing has been conducted in accordance with section two of this article.

(b) A master who has presided at the hearing pursuant to section two of this article shall recommend an order and findings of fact and conclusions of law to the circuit court within ten days following the close of the evidence. Before the recommended order is made, the master may, in his discretion, require the parties to submit proposed findings and conclusions and the supporting reasons therefor.

(c) The master shall sign and send the recommended order, any separate document containing the findings of fact and conclusions of law and the notice of recommended order as set forth in section four-a of this article to the attorney for each party, or if a party is unrepresented, directly to the party, in the same manner as pleadings subsequent to an original complaint are served in accordance with rule five of the rules of civil procedure for trial courts of record. The master shall file the recommended order and the record in the office of the circuit clerk prior to the expiration of the ten-day period during which exceptions can be filed.

(d) A copy of any supporting documents or a summary of supporting documents, prepared or used by the children's advocate or an employee of the child advocate office, and all documents introduced into evidence before the master, shall be made available to the attorney for each party and to each of the parties before the circuit court takes any action on the recommendation.

(e) All recommended orders of the master shall include the statement of findings of fact and conclusions of law, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on
§48A-4-4a. Form of notice of recommended order.

The undersigned family law master hereby recommends the enclosed order to the circuit court of _______ county. If you wish to file objections to this decision, you must file a written petition in accordance with the provisions of chapter 48A-4-8 of the West Virginia Code within a period of ten days ending on ____________, 1990, with the circuit clerk of _______ county and send a copy to counsel for the opposing party or if the party is unrepresented to the party, and to the office of the family law master located at _______________.

If no written petition for review is filed by ____________, 1990, then the recommended order will be sent to the circuit judge assigned to this case. A recommended order which is not signed by a party, or counsel for a party who is represented, by the end of the ten-day period will still be sent to the circuit judge for entry.

YOUR FAILURE TO SIGN THE ORDER AS HAVING BEEN INSPECTED OR APPROVED WILL NOT DELAY THE ENTRY THEREOF.

Family Law Master

§48A-4-5. Orders to be entered by circuit court exclusively.

With the exception of pendente lite support and
custody orders entered by a master in accordance with
the provisions of section three of this article, and
procedural orders entered pursuant to the provisions of
section two of this article, an order imposing sanctions
or granting or denying relief may not be made and
entered except by a circuit court within the jurisdiction
of said court and as authorized by law.

§48A-4-6. Circuit court review of master's action or
recommended order.

A person who alleges that he or she will be adversely
affected or aggrieved by a recommended order of a
master is entitled to review of the proceedings. The
recommended order of the master is the subject of
review by the circuit court, and a procedural action or
ruling not otherwise directly reviewable is subject to
review only upon the review of the recommended order
by the circuit court.

§48A-4-7. Procedure for review by circuit court.

(a) Within ten days after the master's recommended
order, any separate document with findings of fact and
conclusions of law and the notice of recommended order
is served on the parties as set forth in section four of
this article, any party may file exceptions thereto in a
petition requesting that the action by the master be
reviewed by the circuit court. Failure to timely file the
petition shall constitute a waiver of exceptions, unless
the petitioner, prior to the expiration of the ten-day
period, moves for and is granted an extension of time
from the circuit court. At the time of filing the petition,
a copy of the petition for review shall be served on all
parties to the proceeding, in the same manner as
pleadings subsequent to an original complaint are
served under rule five of the rules of civil procedure for
trial courts of record.

(b) Not more than ten days after the filing of the
petition for review, a responding party wishing to file
a cross-petition that would otherwise be untimely may
file, with proof of service on all parties, a cross-petition
for review.
§48A-4-8. Form of petition for review.

(a) The petition for review shall contain a list of exceptions in the form of questions presented for review, expressed in the terms and circumstances of the case, designating and pointing out the errors complained of with reasonable certainty, so as to direct the attention of the circuit court specifically to them, but without unnecessary detail. The statement of questions should be short and concise and should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the court. Parts of the master’s report not excepted to are admitted to be correct, not only as regards the principles, but as to the evidence, upon which they are founded.

(b) The circuit court may require, or a party may choose to submit with the petition for review a brief in support thereof, which should include a direct and concise argument amplifying the reasons relied upon for modification of the master’s recommended order and citing the constitutional provisions, statutes and regulations which are applicable.

§48A-4-9. Answer in opposition to a petition for review.

(a) A respondent shall have ten days after the filing of a petition within which to file an answer disclosing any matter or ground why the recommended order of the master should not be modified by the court in the manner sought by the petition. The judge may require, or a party may choose to submit with the answer, a brief in opposition to the petition, which should include a direct and concise argument in support of the master’s recommended order and citing the constitutional provisions, statutes and regulations which are applicable.

(b) No motion by a respondent to dismiss a petition for review will be received.

(c) Any party may file a supplemental brief at any
time while a petition for review is pending, calling
attention to new cases or legislation or other intervening
matter not available at the time of the party's last filing.

§48A-4-10. Circuit court review of master's recom-
mended order.

(a) The circuit court shall proceed to a review of the
recommended order of the master when:

(1) No petition has been filed within the time allowed,
or the parties have expressly waived the right to file a
petition;

(2) A petition and an answer in opposition have been
filed, or the time for filing an answer in opposition has
expired, or the parties have expressly waived the right
to file an answer in opposition, as the case may be.

(b) To the extent necessary for decision and when
presented, the circuit court shall decide all relevant
questions of law, interpret constitutional and statutory
provisions, and determine the appropriateness of the
terms of the recommended order of the master.

(c) The circuit court shall examine the recommended
order of the master, along with the findings and
conclusions of the master, and may enter the recom-
mended order, may recommit the case, with instruc-
tions, for further hearing before the master or may, in
its discretion, enter an order upon different terms, as
the ends of justice may require. The circuit court shall
not follow the recommendation, findings, and conclu-
sions 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
(d) In making its determinations under this section, the circuit court shall review the whole record or those parts of it cited by a party. If the circuit court finds that a master's recommended order is deficient as to matters which might be affected by evidence not considered or inadequately developed in the master's recommended order, the court may recommit the recommended order to the master, with instructions indicating the court's opinion, or the circuit court may proceed to take such evidence without recommitting the matter.

(e) The order of the circuit court entered pursuant to the provisions of subsection (d) of this section shall be entered not later than ten days after the time for filing pleadings or briefs has expired or after the filing of a notice or notices waiving the right to file such pleading or brief.

(f) If a case is recommitted by the circuit court, the master shall retry the matter within twenty days.

(g) At the time a case is recommitted, the circuit court shall enter appropriate pendente lite orders awarding custody, visitation, child support, spousal support or such other temporary relief as the circumstances of the parties may require.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-1. Action to obtain an order for support of minor child.

§48A-5-3. Withholding from income of amounts payable as support.

§48A-5-1. Action to obtain an order for support of minor child.

(a) An action may be brought in circuit court to obtain an order for the support of a minor child when:

(1) Such child has a parent and child relationship with an obligor;

(2) Such obligor is not the primary caretaker or guardian of the child;
(3) The obligor is not meeting an obligation to support the child;

(4) An enforceable order for the support of the child by the obligor has not been entered by a court of competent jurisdiction; and

(5) There is no pending action for divorce, separate maintenance, or annulment in which the obligation of support owing from the obligor to the child is at issue.

(b) An action may be brought under the provisions of subsection (a) of this section by:

(1) A custodial parent of a child, when the divorce order or other order which granted custody did not make provision for the support of the child by the obligor;

(2) A primary caretaker of a child;

(3) A guardian of the property of a child or the committee for a child; or

(4) The department of health and human resources, when the department is providing assistance on behalf of the child in the form of aid to families with dependent children, and an assignment of any right to support has been assigned to the department.

(c) An action under the provisions of this section may be brought in the county where the obligee, the obligor or the child resides.

(d) If an action for child support is brought under the provisions of this section by an obligee against his or her spouse, such obligee may also seek spousal support from the obligor, unless such support has been previously waived by agreement or otherwise.

(e) Every order of support heretofore or hereafter entered or modified under the provisions of this section shall include a provision for the income withholding in accordance with the provisions of section fifteen-a or fifteen-b, article two, chapter forty-eight of this code.

(f) At any time after the entry of an order for support, the court may, upon the verified petition of an obligee
or the obligor, revise or alter such order, and make a
new order, as the altered circumstances or needs of a
child, an obligee, or the obligor may render necessary
to meet the ends of justice.

§48A-5-3. Withholding from income of amounts payable
as support.

(a) The withholding from an obligor's income of
amounts payable as spousal or child support shall be
enforced by the children's advocate in accordance with
the provisions of this section. Every support order
heretofore or hereafter entered by a circuit court or a
magistrate of this state and every support order entered
by a court of competent jurisdiction of another state
shall be considered to provide for an order of income
withholding in accordance with the provisions of section
fifteen-a or fifteen-b, article two, chapter forty-eight of
this code, notwithstanding the fact that such support
order does not in fact provide for such an order of
withholding.

(b) (1) In any case in which immediate income
withholding is not required, the children's advocate
shall cause the mailing of a notice to the obligor
pursuant to this section when the support payments
required by the order are in arrears a specific number
of days, as follows:

(A) If the order requires support to be paid in
monthly installments, the notice shall be sent on the day
when the support payments are thirty days in arrears;
or

(B) If the order requires support to be paid in weekly
or bi-weekly installments, the notice shall be sent on the
day when the support payments are twenty-eight days
in arrears.

(2) The number of days support payments are in
arrears shall be considered to be the total cumulative
number of days during which payments required by a
court order have been delinquent, whether or not such
days are consecutive.

(c) If notice required by subsection (b) of this section
is appropriate, the children's advocate shall determine the time for a meeting between the obligor and the children's advocate and the time for a hearing before the family law master, and shall then set forth in such notice the times and places at which the meeting and hearing will be held if withholding is contested. The meeting and hearing may be scheduled on the same date, but in no case shall the meeting with the advocate be scheduled less than fifteen days after the date the notice is mailed nor shall the hearing before the master be scheduled more than twenty-one days after the date the notice is mailed. The children's advocate shall send such notice by first class mail to the delinquent obligor. The notice shall inform the delinquent obligor of the following:

(1) The amount owed;

(2) That it is proposed that there be withholding from the obligor's income of amounts payable as support, and that if withholding is uncontested, or is contested but determined appropriate, the amount withheld will be equal to the amount required under the terms of the current support order, plus amounts for any outstanding arrearages;

(3) An identification of the type or types of income from which amounts payable as support will be withheld, and a statement of the amounts proposed to be withheld, expressed in meaningful terminology such as dollar amounts or a percentage of disposable earnings, as may be appropriate for the type of income involved;

(4) That the withholding will apply to the obligor's present source of income and to any future source of income;

(5) That any action by the obligor to purposefully minimize his or her income will result in the enforcement of support being based upon potential and not just actual earnings;

(6) That payment of the arrearage after the date of the notice is not a bar to such withholding;

(7) That if the obligor wishes to agree to withholding
that he or she should notify the children's advocate, in writing, within fourteen days from the date of the notice in order to cancel a scheduled meeting with the office of the children's advocate and a hearing with the family law master;

(8) That if the obligor fails to respond to the notice or fails to appear at the meeting or hearing after responding to the notice, withholding will automatically occur as described in the notice;

(9) That if the obligor desires to contest the withholding on the grounds that the amount to be withheld is incorrect or that withholding is not proper because of mistakes of fact, he or she must, within fourteen days of the date of the notice, inform the children's advocate in writing of the reasons why the proposed withholding is contested;

(10) That a mistake of fact exists only when there is an error in the amount of current or overdue support claimed in the notice, there is a mistake as to the identity of the obligor, or the amount of the proposed withholding exceeds the amount permitted to be withheld under applicable federal or state law;

(11) That matters such as lack of visitation, inappropriateness of the support award, or changed financial circumstances of the obligee or the obligor will not be considered at any hearing held pursuant to the notice, but may be raised by the filing of a separate petition;

(12) That if the obligor contests the withholding, in writing, a meeting with the children's advocate will be held at a time and place set forth in the notice, for the purpose of attempting to settle any issues which are contested;

(13) That if the meeting with the children's advocate fails to resolve the issues being contested, a hearing before the family law master will be held at a time and place set forth in the notice, and that following such hearing, the master will make a recommended order to the circuit court;

(14) That a master's recommended order as to with-
holding will become effective when it is confirmed and
entered by the circuit court, and that if the obligor
disagrees with the master’s recommended order, he or
she will be given the opportunity to make objections
known to the circuit court; and

(15) That if, while the withholding is being contested,
it is determined that the obligor is in arrears in an
amount equal to or greater than one month’s support
obligation, but the amount of the arrearage is disputed,
then income withholding for the current payment of
support will be instituted, and may not be stayed
pending a final determination as to the amount of
arrearages due.

(d) Withholding should occur when the support order
provides for immediate income withholding, or if
immediate income withholding is not so provided, then
after entry of the master’s recommended order by the
circuit court. In any case where withholding should
occur, the source of income shall proceed to withhold so
much of the obligor’s income as is necessary to comply
with the order authorizing such withholding, up to the
maximum amount permitted under applicable law.
Such withholding, unless otherwise terminated under
the provisions of this section, shall apply to any
subsequent source of income or any subsequent period
of time during which income is received by the obligor.

(e) Notwithstanding any other provision of this code
to the contrary which provides for a limitation upon the
amount which may be withheld from earnings through
legal process, the amount of an obligor’s aggregate
disposable earnings for any given workweek which can
be withheld as support payments is to be determined in
accordance with the provisions of this subsection, as
follows:

(1) After ascertaining the status of the payment
record of the obligor under the terms of the support
order, the payment record shall be examined to deter-
mine whether any arrearages are due for amounts
which should have been paid prior to a twelve-week
period which ends with the workweek for which withholding is sought to be enforced.

(2) If none of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty percent of the obligor's disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty percent of the obligor's disposable earnings for that week.

(3) If a part of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) Where the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty-five percent of the obligor's disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty-five percent of the obligor's disposable earnings for that week.

(4) In addition to the percentage limitations set forth in subdivisions (2) and (3) of this subsection, it shall be a further limitation that in no case shall the total amounts withheld for current payments plus arrearages exceed the amounts withheld for current payments by an amount greater than ten percent of the obligor's disposable income.

(5) The provisions of this subsection shall apply directly to the withholding of disposable earnings of an obligor regardless of whether the obligor is paid on a weekly, bi-weekly, monthly or other basis.

(6) If an obligor acts so as to purposefully minimize his or her income and to thereby circumvent the
provisions of this section which provide for withholding
from income of amounts payable as support, the amount
to be withheld as support payments may be based upon
the obligor's potential earnings rather than his or her
actual earnings, and such obligor may not rely upon the
percentage limitations set forth in this subsection which
limit the amount to be withheld from disposable
earnings.

(f) The source of income of any obligor who is subject
to withholding, upon being given notice of withholding,
shall withhold from such obligor's income the amount
specified by the notice and pay such amount to the child
advocate office for distribution in accordance with the
provisions of section four, article three of this chapter.
The notice given to the source of income shall contain
only such information as may be necessary for the
source of income to comply with the withholding order.
Such notice to the source of income shall include, at a
minimum, the following:

(1) The amount to be withheld from the obligor's
income, and a statement that the amount to be withheld
for support and other purposes, including the fee
specified under subdivision (3) of this subsection, may
not be in excess of the maximum amounts permitted
under section 303(b) of the Federal Consumer Credit
Protection Act or limitations imposed under the provi-
sions of this code;

(2) That the source of income must send the amount
to be withheld from the obligor's income to the child
advocate office within ten days of the date the obligor
is paid;

(3) That, in addition to the amount withheld under the
provisions of subdivision (1) of this subsection, the source
of income may deduct a fee, not to exceed fifty cents,
for administrative costs incurred by the source of
income, for each withholding;

(4) That withholding is binding on the source of
income until further notice by the child advocate office;

(5) That the source of income is subject to a fine for
(6) That if the source of income fails to withhold income in accordance with the provisions of the notice, the source of income is liable for the accumulated amount the source of income should have withheld from the obligor's income;

(7) That the withholding under the provisions of this section shall have priority over any other legal process under the laws of this state against the same income, and shall be effective despite any exemption that might otherwise be applicable to the same income;

(8) That the source of income may combine withheld amounts from obligors' income in a single payment to the child advocate office and separately identify the portion of the single payment which is attributable to each obligor;

(9) That the source of income must implement withholding no later than the first pay period or first date for payment of income that occurs after fourteen days following the date the notice to the source of income was mailed; and

(10) That the source of income must notify the child advocate office promptly when the obligor terminates his or her employment or otherwise ceases receiving income from the source of income, and must provide the obligor's last known address and the name and address of the obligor's new source of income, if known.

(g) The director shall, by administrative rule, establish procedures for promptly refunding to obligors amounts which have been improperly withheld under the provisions of this section.

(h) A source of income must send the amount to be withheld from the obligor's income to the child advocate office and must notify the child advocate office of the date of withholding, within ten days of the date the obligor is paid.
(i) In addition to any amounts payable as support withheld from the obligor’s income, the source of income may deduct a fee, not to exceed fifty cents, for administrative costs incurred by the source of income, for each withholding.

(j) Withholding of amounts payable as support under the provisions of this section is binding on the source of income until further notice by the child advocate office.

(k) Every source of income who receives a notice of withholding under the provisions of this section shall implement withholding no later than the first pay period or first date for the payment of income which occurs after fourteen days following the date the notice to the source of income was mailed.

(l) A source of income who employs or otherwise pays income to an obligor who is subject to withholding under the provisions of this section must notify the child advocate office promptly when the obligor terminates employment or otherwise ceases receiving income from the source of income, and must provide the office with the obligor’s last known address and the name and address of the obligor’s new source of income, if known.

(m) A source of income who has more than a single obligor who is subject to withholding from income under the provisions of this article may combine all withheld amounts into a single payment to the child advocate office, with the portion thereof which is attributable to each obligor being separately designated.

(n) A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to withhold from income due an obligor following receipt by such source of income of proper notice under subsection (f) of this section: Provided, That a source of income shall not be required to vary the normal pay and disbursement cycles in order to comply with the provisions of this section.

(o) That support collection under the provisions of this
section shall have priority over any other legal process under the laws of this state against the same income, and shall be effective despite any exemption that might otherwise be applicable to the same income.

(p) Any source of income who discharges from employment, refuses to employ, or takes disciplinary action against any obligor subject to income withholding required by this section because of the existence of such withholding and the obligations or additional obligations which it imposes on the source of income, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

(q) In any case where immediate income withholding is not required then, at any time following a period of eighteen months during which the obligor has owed no arrearages to the obligee or to the state of West Virginia or any other state, if the obligee and obligor agree to the termination of withholding and demonstrate to the children's advocate that there is a reliable alternative method by which to make the support payments, they may request the children's advocate to terminate withholding and such withholding from income may cease until such time as further withholding is required by law. The director of the child advocate office shall, by legislative rule, establish state termination standards which will ensure, at a minimum, that withholding will not be terminated where there are indications that it is unlikely that support will continue without such withholding. The mere fact that all arrearages have been paid shall not be a sufficient ground for the termination of withholding.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-5. Representation of parties.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

§48A-6-5. Representation of parties.

1 (a) The children's advocate of the county where the action under this section is brought shall litigate the action in the best interests of the child although the action is commenced in the name of a plaintiff listed in section one of this article.
(b) The defendant shall be advised of his right to counsel. In the event he files an affidavit that he is a poor person within the meaning of section one, article two, chapter fifty-nine of this code, counsel shall be appointed to represent him. The service and expenses of counsel shall be paid in accordance with the provisions of article twenty-one, chapter twenty-nine of this code: Provided, That the court shall make a finding of eligibility for appointed counsel in accordance with the requirements of said article and, if the person qualifies, any blood or tissue tests ordered to be taken shall be paid as part of the costs of the proceeding.

(c) The children's advocate shall litigate the action only to the extent of establishing paternity and establishing and enforcing a child support order.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

(a) The natural father of a child may file an application to establish paternity in circuit court when he acknowledges that the child is his or when he has married the mother of the child after the child's birth and upon consent of the mother, or if she is deceased or incompetent, or has surrendered custody, upon the consent of the person or agency having custody of the child or of a court having jurisdiction over the child's custody. The application may be filed in the county where the natural father resides, the child resides, or the child was born. The circuit court, if satisfied that the applicant is the natural father and that establishment of the relationship is for the best interest of the child, shall enter the finding of fact and an order upon its docket, and thereafter the child is the child of the applicant, as though born to him in lawful wedlock.

(b) A written acknowledgment by both the man and woman that the man is the father of the named child legally establishes the man as the father of the child for all purposes and child support can be established under the provisions of this chapter.

(c) On and after the first day of November, one thousand nine hundred ninety, in addition to providing
the information necessary to establish paternity in accordance with the provisions of this section, a person whose name is to appear in the order establishing paternity as a parent shall furnish to the clerk of the circuit court the social security account number (or numbers, if the parent has more than one such number) issued to the parent. A record of the social security number or numbers shall be forwarded to the state registrar of vital statistics along with the order establishing paternity.

ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.


If the initiating court finds that the petition or complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition or complaint, one of which copies shall be certified, and one copy of this article to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-4. Production of writings—By person other than party.

When it appears by affidavit or otherwise that a writing or document in the possession of any person not a party to the matter in controversy is material and proper to be produced before the court, or any person
CHILD WELFARE

5 appointed by it or acting under its process or authority,
6 or any such person as is named in section one of this
7 article, such court, family law master, judge or presi-
8 dent thereof may order the clerk of the said court to
9 issue a subpoena duces tecum to compel such production
10 at a time and place to be specified in the order.

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CHAPTER 41

(Com. Sub. for H. B. 4044—By Delegate M. Burke)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen; to amend and reenact section three, article one, chapter forty-nine of said code; and to amend and reenact section seven, article seven of said chapter, all relating to the prohibition of the sale or purchase of a child; creating penalties and exceptions; expanding the definition of “abused child”; and contributing to delinquency or neglect of child.

Be it enacted by the Legislature of West Virginia:

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

Chapter
48. Domestic Relations.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 4. ADOPTION.

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

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

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

(c) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than two thousand dollars, or may be imprisoned in the county jail for not more than twelve months, or both fined and imprisoned.

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

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

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

(2) Reasonable and customary legal, medical, hospital, or other expenses incurred in connection with legal adoption proceedings.
(3) Fees and expenses included in any agreement in which a woman agrees to become a surrogate mother.

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

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

§49-7-7. Contributing to delinquency or neglect of a child.

§49-1-3. Definitions relating to abuse and neglect.

1. (a) “Abused child” means a child whose health or welfare is harmed or threatened by:

   (1) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury, or substantial mental or emotional injury, upon the child or another child in the home; or

   (2) Sexual abuse or sexual exploitation; or

   (3) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of section sixteen, article four, chapter forty-eight of this code.

   In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

   (b) “Abusing parent” means a parent, guardian, or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

   (c) “Child abuse and neglect” or “child abuse or neglect” means physical injury, substantial mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale, or negligent treatment or maltreatment of a child by a parent, guardian, or custodian who
is responsible for the child’s welfare, under circumstan-
ces which harm or threaten the health and welfare of
the child.

(d) “Child abuse and neglect services” means social
services which are directed toward:

(1) Protecting and promoting the welfare of children
who are abused or neglected;

(2) Identifying, preventing and remedying conditions
which cause child abuse and neglect;

(3) Preventing the unnecessary removal of children
from their families by identifying family problems and
assisting families in resolving problems which could
lead to a removal of children and a breakup of the
family;

(4) In cases where children have been removed from
their families, providing services to the children and the
families so as to restore such children to their families;

(5) Placing children in suitable adoptive homes when
restoring the children to their families is not possible or
appropriate; and

(6) Assuring the adequate care of children away from
their families when the children have been placed in the
custody of the department or third parties.

(e) “Imminent danger to the physical well-being of the
child” means an emergency situation in which the
welfare or the life of the child is threatened. Such
emergency situation exists when there is reasonable
cause to believe that any child in the home is or has been
sexually abused or sexually exploited, or reasonable
cause to believe that the following conditions threaten
the health or life of any child in the home:

(1) Nonaccidental trauma inflicted by a parent,
guardian, custodian, sibling or a babysitter or other
caretaker; or

(2) A combination of physical and other signs indicat-
ing a pattern of abuse which may be medically diagnosed as battered child syndrome; or

(3) Nutritional deprivation; or

(4) Abandonment by the parent, guardian or custodian; or

(5) Inadequate treatment of serious illness or disease; or

(6) Substantial emotional injury inflicted by a parent, guardian or custodian; or

(7) Sale or attempted sale of the child by the parent, guardian, or custodian.

(f) "Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, child care, and law-enforcement personnel, social workers, psychologists, and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children.

"Community team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community, and may consist of several multidisciplinary teams with different functions.

(g) (1) "Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because
of the disappearance or absence of the child's parent or custodian.

(2) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

(h) "Parenting skills" means a parent's competencies in providing physical care, protection, supervision and psychological support appropriate to a child's age and state of development.

(i) "Sexual abuse" means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian, or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(C) Any conduct whereby a parent, guardian or
custodian displays his or her sex organs to a child, or
procures another person to display his or her sex organs
to a child, for the purpose of gratifying the sexual desire
of the parent, guardian or custodian, of the person
making such display, or of the child, or for the purpose
of affronting or alarming the child.

(j) "Sexual contact" means sexual contact as that term
is defined in section one, article eight-b, chapter sixty-
one of this code.

(k) "Sexual exploitation" means an act whereby:

1. A parent, custodian, or guardian, whether for
   financial gain or not, persuades, induces, entices or
   coerces a child to engage in sexually explicit conduct as
   that term is defined in section one, article eight-c,
   chapter sixty-one of this code;

2. A parent, guardian, or custodian persuades,
   induces, entices or coerces a child to display his or her
   sex organs for the sexual gratification of the parent,
   guardian, custodian, or a third person, or to display his
   or her sex organs under circumstances in which the
   parent, guardian, or custodian knows such display is
   likely to be observed by others who would be affronted
   or alarmed.

(l) "Sexual intercourse" means sexual intercourse as
that term is defined in section one, article eight-b,
chapter sixty-one of this code.

(m) "Sexual intrusion" means sexual intrusion as that
term is defined in section one, article eight-b, chapter
sixty-one of this code.

§49-7-7. Contributing to delinquency or neglect of a child.

(a) A person who by any act or omission contributes
to, encourages or tends to cause the delinquency or
neglect of any child, including, but not limited to, aiding
or encouraging any such child to habitually or contin-
uously refuse to respond, without just cause, to the lawful
supervision of such child's parents, guardian or custo-
dian or to be habitually absent from school without just
cause, shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than fifty nor
more than five hundred dollars, or imprisoned in the
county jail for a period not exceeding one year, or both
fined and imprisoned.

(b) In addition to any penalty provided under this
section and any restitution which may be ordered by the
court under article eleven-a of chapter sixty-one, the
court may order any person convicted under the
provisions of this section to pay all or any portion of the
cost of medical, psychological or psychiatric treatment
of the child resulting from the act or acts for which the
person is convicted, whether or not the child is consi-
dered to have sustained bodily injury.

(c) The provisions of this section shall not apply to any
parent, guardian or custodian who fails or refuses, or
allows another person to fail or refuse, to supply a child
under the care, custody or control of such parent,
guardian or custodian with necessary medical care,
when such medical care conflicts with the tenets and
practices of a recognized religious denomination or
order of which such parent, guardian or custodian is an
adherent or member.

CHAPTER 42
(S. B. 401—By Senators Wolfe and Pritt)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article six,
chapter forty-nine of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the length of time the division of human services may
keep an abused or neglected child in its custody during
emergency situations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-3. Petition to court when child believed neglected or abused — Temporary custody.

1 (a) Upon the filing of a petition, the court may order that the child alleged to be an abused or neglected child be delivered for not more than ten days into the custody of the state department or a responsible relative, pending a preliminary hearing, if it finds that: (1) There exists imminent danger to the physical well-being of the child, and (2) there are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's present custody. In a case where there is more than one child in the home, the petition shall so state, and notwithstanding the fact that the allegations of abuse or neglect may pertain to less than all of such children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonable available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the state department or a responsible relative. The court order shall state: (1) That continuation in the home is contrary to the best interests of the child and why; and (2) 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. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.
(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the state department or an appropriate person or agency for a period not exceeding sixty days: Provided, That the court order shall state (1) that continuation in the home is contrary to the best interests of the child and state the reasons therefor; (2) whether or not the department made reasonable efforts to prevent the child's removal from his or her home; (3) 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; and (4) what efforts should be made by the department to facilitate the child's return home: Provided, however, That if the court grants an improvement period as provided in subsection (b), section two of this article, the sixty-day limit upon temporary custody may be waived.

(c) If a child or children shall, in the presence of a child protective service worker of the division of human services, be in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section three, article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: Provided, That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a
juvenile referee of the county wherein custody was
taken, or if no such judge or referee be available, before
a circuit judge or a juvenile referee of an adjoining
county, and shall immediately apply for an order
ratifying the emergency custody of the child pending the
filing of a petition. The circuit court of every county in
the state shall appoint at least one of the magistrates of
the county to act as a juvenile referee, who shall serve
at the will and pleasure of the appointing court, and who
shall perform the functions prescribed for such position
by the provisions of this subsection. The parents,
guardians or custodians of the child or children may be
present at the time and place of application for an order
ratifying custody, and if at the time the child or children
are taken into custody by the worker, the worker knows
which judge or referee is to receive the application, the
worker shall so inform the parents, guardians or
custodians. The application for emergency custody may
be on forms prescribed by the supreme court of appeals
or prepared by the prosecuting attorney or the appli-
cant, and shall set forth facts from which it may be
determined that the probable cause described above in
this subsection exists. Upon such sworn testimony or
other evidence as the judge or referee deems sufficient,
the judge or referee may order the emergency taking
by the worker to be ratified. If appropriate under the
circumstances, the order may include authorization for
an examination as provided for in subsection (b), section
four of this article. If a referee issues such an order, the
referee shall by telephonic communication have such
order orally confirmed by a circuit judge of the circuit
or an adjoining circuit who shall on the next judicial day
enter an order of confirmation. If the emergency taking
is ratified by the judge or referee, emergency custody
of the child or children shall be vested in the state
department until the expiration of the next two judicial
days, at which time any such child taken into emergency
custody shall be returned to the custody of his or her
parent, guardian or custodian unless a petition has been
filed and custody of the child has been transferred under
the provisions of section three of this article.
AN ACT to amend and reenact section four, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to civil service system; exemptions to coverage under classified service; changing definition of seasonal employee; exempting nine-month employees of state forests, parks and recreational areas from civil service coverage and benefits accorded full-time employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-4. Classified-exempt service; additions to classified service; exemptions.

(a) The classified-exempt service includes all positions included in the classified-exempt service on the effective date of this article.

(b) Except for the period commencing on the first day of July, one thousand nine hundred ninety-two, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year one thousand nine hundred ninety-six, and in each fourth year thereafter, the governor may, by executive order, with the written consent of the state personnel board and the appointing authority concerned, add to the list of positions in the classified service, but such additions shall not include any positions specifically exempted from coverage as provided in this section.

(c) The following offices and positions are exempt from coverage under the classified service:
(1) All judges, officers and employees of the judiciary;
(2) All members, officers and employees of the Legislature;
(3) All officers elected by popular vote and employees of the officer;
(4) All secretaries of departments and employees within the office of a secretary;
(5) Members of boards and commissions and heads of departments appointed by the governor or such heads of departments selected by commissions or boards when expressly exempt by law or board order;
(6) Excluding the policymaking positions in an agency, one principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the governor or Legislature;
(7) All policymaking positions;
(8) Patients or inmates employed in state institutions;
(9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Legislature or a committee thereof, an executive department or by authority of the governor;
(10) All employees of the office of the governor, including all employees assigned to the executive mansion;
(11) County road supervisors employed by the division of highways or their successors;
(12) Part-time professional personnel engaged in professional services without administrative duties and personnel employed for ninety days or less during a working year;
(13) Members and employees of the board of regents or its successor agencies;
(14) Uniformed personnel of the division of public safety; and
54  (15) Seasonal employees in the state forests, parks,
55  and recreational areas working less than 1,560 hours per
56  calendar year: Provided, That notwithstanding any
57  provision of law to the contrary, seasonal employees
58  shall not be considered full-time employees.
59  
60  (d) The Legislature finds that the holding of political
61  beliefs and party commitments consistent or compatible
62  with those of the governor contributes in an essential
63  way to the effective performance of and is an approp-
64  riate requirement for occupying certain offices or
65  positions in state government, such as the secretaries of
66  departments and the employees within their offices, the
67  heads of agencies appointed by the governor and, for
68  each such head of agency, a private secretary and one
69  principal assistant or deputy, all employees of the office
70  of the governor including all employees assigned to the
71  executive mansion, as well as any persons appointed by
72  the governor to fill policymaking positions and county
73  road supervisors or their successors, in that such offices
74  or positions are confidential in character and/or require
75  their holders to act as advisors to the governor or his
76  appointees, to formulate and implement the policies and
77  goals of the governor of his appointees, or to help the
78  governor or his appointees communicate with and
79  explain their policies and views to the public, the
§1. Finding and declaring certain claims against the department of education; department of finance and administration; governor's office; and railroad maintenance authority; and Workers' Compensation Fund, to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state and agencies thereof, which have arisen due to over-expenditures of the departmental appropriations by officers of such state spending units, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below, and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Department of Education:

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<th>(TO BE PAID FROM GENERAL REVENUE FUND)</th>
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<td>Patsy A. Kerns</td>
<td>$398.00</td>
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<tr>
<td>45</td>
<td>Elizabeth Ann Kirby</td>
<td>$199.00</td>
</tr>
<tr>
<td>46</td>
<td>William N. Kraft</td>
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</tr>
<tr>
<td>47</td>
<td>Elizabeth M. Lathey</td>
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<td>48</td>
<td>Phyllis Ann Manley</td>
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<td>49</td>
<td>Pamela Lea McCourt</td>
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<tr>
<td>50</td>
<td>Marquita Ann McIntyre</td>
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<tr>
<td>51</td>
<td>Deborah A. Myers</td>
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<td>52</td>
<td>John Alan Quesenberry</td>
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<td>53</td>
<td>Kathleen L. Quesenberry</td>
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<td>54</td>
<td>Robert R. Reel</td>
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<td>55</td>
<td>Stanley Robinson</td>
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<tr>
<td>56</td>
<td>Zelma Stewart</td>
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<td>57</td>
<td>Rose Mary Wentz</td>
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<tr>
<td>58</td>
<td>Jeffrey Zigray</td>
<td>$192.00</td>
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</table>

(b) **Claims against the Department of Finance and Administration:**

(TO BE PAID FROM GENERAL REVENUE FUND)

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>62</td>
<td>Coal Valley News</td>
<td>$23.94</td>
</tr>
<tr>
<td>63</td>
<td>WV Newspaper Publishing Co., Inc.</td>
<td>$33.11</td>
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(c) **Claim against the Governor's Office:**

(TO BE PAID FROM GENERAL REVENUE FUND)

<table>
<thead>
<tr>
<th>#</th>
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</thead>
<tbody>
<tr>
<td>67</td>
<td>City of Elkins</td>
<td>$31,440.89</td>
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(d) **Claim against the Railroad Maintenance Authority:**

(TO BE PAID FROM GENERAL REVENUE FUND)

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>71</td>
<td>CSX Transportation, Inc</td>
<td>$100,000.00</td>
</tr>
</tbody>
</table>
AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

The Legislature has duly considered the findings of fact and recommendations for awards reported to it by the court of claims in respect to the following named claimants who were innocent victims of crime within this state and entitled to compensation; and in respect to each of such named claimants the Legislature adopts those findings of fact as its own, hereby declares it to be the moral obligation of the state to pay each such claimant in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

Claims for crime victims compensation awards:

(1) Angalich, Nancy A. $ 5,000.00
(2) Angalich, Nancy A., as guardian of David Angalich $ 5,000.00
AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia: 
CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the adjutant general; alcohol beverage control commissioner; board of education; attorney general; board of directors of the state college system; board of trustees of the University of West Virginia; department of agriculture; department of corrections; department of education; department of energy; department of finance and administration; department of health; department of health—office of the chief medical examiner; department of highways; department of human services; department of labor; department of motor vehicles; department of natural resources; department of public safety; division of forestry; education and state employees grievance board; human rights commission; nonintoxicating beer commission; public employees insurance agency; public service commission; secretary of state; state athletic commission; state fire marshal; state tax department; state treasurer; supreme court of appeals; and workers’ compensation fund, to be moral obligations of the state and directing payment thereof; and finding and declaring a claim against the state for unjust arrest and imprisonment to be a moral obligation of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.
(a) **Claim against the Adjutant General:**

(TO BE PAID FROM GENERAL REVENUE FUND)

1. AT&T Communications, Inc. ... $ 52.45

(b) **Claims against the Alcohol Beverage Control Commissioner:**

(TO BE PAID FROM SPECIAL REVENUE FUND)

1. AT&T Communications, Inc. ... $ 223.56
2. J. David Cecil ................. $ 773.25
3. John D. Jones and Carroll G. Jones,
   d/b/a Farmington Garbage Disposal Co. ........... $ 50.00

(c) **Claims against the Board of Education:**

(TO BE PAID FROM GENERAL REVENUE FUND)

1. The Board of Education of the County of McDowell et al. ........... $ 2,305,816.60

Provided, That $461,163.32 shall be paid during the time period beginning the first day of July, one thousand nine hundred ninety, and ending the last day of June, one thousand nine hundred ninety-one; that $461,163.32 shall be paid during the time period beginning the first day of July, one thousand nine hundred ninety-one, and ending the last day of June, one thousand nine hundred ninety-two; that $461,163.32 shall be paid during the time period beginning the first day of July, one thousand nine hundred ninety-two, and ending the last day of June, one thousand nine hundred ninety-three; that $461,163.32 shall be paid during the time period beginning the first day of July, one thousand nine hundred ninety-three, and ending the last day of June, one thousand nine hundred ninety-four; that $461,163.32 shall be paid during the time period beginning the first day of July, one thousand nine hundred ninety-four, and ending the last day of June, one thousand nine hundred ninety-five: Provided, however, That the Board of
Education of the County of McDowell shall be paid the full amount provided for in this act no later than the last day of June, one thousand nine hundred ninety-five.

(2) Board of Education of the County of Grant

Provided, That $336,049.05 shall be paid during the time period beginning the first day of July, one thousand nine hundred ninety, and ending the last day of June, one thousand nine hundred ninety-one and that $336,049.05 shall be paid during the time period beginning the first day of July one thousand nine hundred ninety-one, and ending the last day of June one thousand nine hundred ninety-two: Provided, however, That the Board of Education of the County of Grant shall be paid the full amount provided for in this act no later than the last day of June one thousand nine hundred ninety-two.

(3) Board of Education of the County of Ritchie

Provided, That $198,318.00 shall be paid during the time period beginning the first day of July one thousand nine hundred ninety, and ending the last day of June one thousand nine hundred ninety-one and that $198,318.00 shall be paid during the time period beginning the first day of July one thousand nine hundred ninety-one, and ending the last day of June one thousand nine hundred ninety-two: Provided, however, That the Board of Education of the County of Ritchie shall be paid the full amount provided for in this act no later than the last day of June one thousand nine hundred ninety-two.

(d) Claims against the Attorney General:

<table>
<thead>
<tr>
<th>TO BE PAID FROM GENERAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) AT&amp;T Companies .................. $ 928.76</td>
</tr>
<tr>
<td>(2) AT&amp;T Communications, Inc. ... $ 1,374.81</td>
</tr>
<tr>
<td>(3) The Chesapeake and Potomac Telephone Company of West Virginia .. $ 2,486.03</td>
</tr>
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</table>
Ch. 46] Claims

90  (4) Dowdy Brothers, d/b/a Travel Host Inn ............... $ 30.46  
91  (5) West Publishing Company ...... $ 4,322.09  
93  (e) Claims against the Board of Directors of the State College System:  
96  (TO BE PAID FROM SPECIAL REVENUE FUND)  
97  from Acct. No. 8623-11  
98  (1) James Whitlash ................... $ 27.56  
99  from Acct. No. 8855  
100 (2) Wiseman Construction Co., Inc. ................. $ 74,452.20  
102  (f) Claim against the Board of Trustees of the University of West Virginia:  
105  (TO BE PAID FROM SPECIAL REVENUE FUND)  
106  from Acct. No. 8610-31  
107  (1) Kenneth Paul Pennington ......... $ 540.85  
108  (g) Claim against the Department of Agriculture:  
110  (TO BE PAID FROM GENERAL REVENUE FUND)  
111  (1) Jean F. Smith .................... $ 936.00  
112  (h) Claims against the Department of Corrections:  
114  (TO BE PAID FROM GENERAL REVENUE FUND)  
115  (1) American White Goods/Mid American Bank & Trust ... $ 514.85  
116  (2) Braxton County Memorial Hospital ..................... $ 524.75  
118  (3) The Chesapeake and Potomac Telephone Company of West Virginia.......... $ 1,563.15  
121  (4) Hervis Leasing ...................... $ 1,505.06  
123  (5) John Marshall Independent Laboratory ................. $ 35.00
<table>
<thead>
<tr>
<th>Claim Number</th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>125</td>
<td>Kanawha County Commission</td>
<td>$48,870.89</td>
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<tr>
<td>126</td>
<td>Lewisburg Cash Register, Inc.</td>
<td>$296.58</td>
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<tr>
<td>127</td>
<td>Potomac Valley Hospital</td>
<td>$1,589.18</td>
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<tr>
<td>128</td>
<td>Regional Jail and Correctional Facility Authority</td>
<td>$42,189.96</td>
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<td>129</td>
<td>Lewisburg Cash Register, Inc.</td>
<td>$296.58</td>
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<tr>
<td>130</td>
<td>Reynolds Memorial Hospital</td>
<td>$3,391.75</td>
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<tr>
<td>131</td>
<td>United Air Lines, Inc.</td>
<td>$104.00</td>
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<tr>
<td>132</td>
<td>Wheeling Hospital, Inc.</td>
<td>$86.00</td>
</tr>
<tr>
<td>133</td>
<td>Youth Services System</td>
<td>$53.50</td>
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</table>

(i) Claims against the Department of Education:

<table>
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<tr>
<th>Claim Number</th>
<th>Description</th>
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<tbody>
<tr>
<td>137</td>
<td>Richard G. Diefenbaugh</td>
<td>$271.60</td>
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<td>138</td>
<td>National Association of State Boards of Education</td>
<td>$7,000.00</td>
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<tr>
<td>139</td>
<td>Jacqueline M. Senseney</td>
<td>$235.00</td>
</tr>
<tr>
<td>140</td>
<td>Lynda Springston</td>
<td>$666.87</td>
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<td>141</td>
<td>Deborah D. Thomas</td>
<td>$235.00</td>
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<td>142</td>
<td>Henry A. Thomas</td>
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<td>143</td>
<td>Tichenor Reporting Service</td>
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<td>144</td>
<td>Susan C. Veltri</td>
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<tr>
<td>145</td>
<td>West Virginia Press</td>
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</table>

(j) Claim against the Department of Energy:

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<th>Claim Number</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>151</td>
<td>Cole Business Furniture, a Division of Joyce</td>
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</table>

(k) Claims against the Department of Finance and Administration:

<table>
<thead>
<tr>
<th>Claim Number</th>
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<tbody>
<tr>
<td>157</td>
<td>Phyllis Jeanne Eastwood</td>
<td>$100.00</td>
</tr>
<tr>
<td>158</td>
<td>The Evening/Weekend Journal</td>
<td>$16.61</td>
</tr>
<tr>
<td>159</td>
<td>The Fayette Tribune</td>
<td>$41.35</td>
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<tr>
<td>162</td>
<td>Multigraphics, a Division of A.M. International, Inc.</td>
<td>$2,845.00</td>
</tr>
</tbody>
</table>
(5) West Virginia Newspaper Publishing Co., Inc. .......... $ 57.94

(1) Claims against the Department of Health:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) American Mobilphone, Inc. .......... $ 80.00
(2) Cabell Huntington Hospital ... $ 423.60
(3) The Chesapeake and Potomac Telephone Company of West Virginia .......... $ 801.29
(4) Hamilton Business Systems, Inc. ........ $ 88.27
(5) Prestera Center for Mental Health Services, Inc. .......... $ 8,657.00
(6) Radiology, Inc. ............... $ 31.20
(7) Summit Center for Human Development, Inc. .......... $ 32,855.00
(8) Carter Thompson .......... $ 20.00
(9) W. J. Clark Septic Tank Service, Inc. .......... $ 910.00
(10) Xerox Corporation ........ $ 2,113.67

(m) Claims against the Department of Health—Office of the Chief Medical Examiner:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) John J. Keefe, M.D. ............... $ 50.00
(2) Joseph E. Schreiber, D.O. .......... $ 250.00
(3) Reynaldo B. Vista, M.D. .......... $ 100.00

(n) Claims against the Department of Highways:

(TO BE PAID FROM STATE ROAD FUND)

(1) Frances Barker ............... $ 65.63
(2) Thomas R. Burgess .......... $ 545.71
(3) Thomas R. Burgess, II .......... $ 750.00
(4) Bethel Childers ............... $ 150,000.00
(5) Thomas Childers .......... $ 15,000.00
(6) Benjamin F. Clansy and
    Bula D. Clansy ................. $ 1,256.10
(7) Sherlock Dean and
    Evelyn Dean .................. $ 5,364.00
(8) Patricia L. Efaw ............. $ 80.83
(9) Virginia Ellison Foss ....... $ 10,542.60
(10) James M. Hunt and
    Gale S. Hunt ................ $ 53.00
(11) Joni Carol Koenig .......... $ 7,000.00
(12) Karl E. Koenig ............. $ 3,000.00
(13) David L. Mallory .......... $ 646.81
(14) Virginia L. Margolis ...... $ 3,500.00
(15) Nationwide Mutual
    Insurance Company .......... $ 215.00
(16) Margaret L. Prager ....... $ 88.73
(17) Marvin L. Rush and Katherine
    Josephine Rush ............. $ 1,500.00
(18) Tri-State Asphalt
    Corporation ................ $ 117,395.22
(19) Vecellio & Grogan, Inc. .... $ 3,214,006.75
(20) Sarah J. Winchester ...... $ 650.00

Claims against the Department
of Human Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Altmeyer Funeral
    Homes, Inc. ................. $ 2,000.00
(2) Armstrong Funeral
    Home, Inc. ................. $ 400.00
(3) Bartlett Funeral Home ..... $ 400.00
(4) Beard Mortuary ............ $ 400.00
(5) Bennett Widener
    Funeral Home ............. $ 400.00
(6) Blue Ridge Funeral Home .. $ 650.00
(7) Brown Funeral Home ....... $ 325.00
(8) Broyles-McGuire
    Funeral Home ............. $ 400.00
(9) Carl Wilson Funeral Home .. $ 1,450.00
(10) Carpenter & Ford, Inc. ... $ 400.00
(11) Casto Funeral Home ....... $ 400.00
(12) Chafin Funeral Home ...... $ 1,200.00
(13) Chapman Funeral Home, Inc. $ 400.00
<table>
<thead>
<tr>
<th>Ch. 46]</th>
<th>CLAIMS</th>
<th>501</th>
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<tbody>
<tr>
<td>241</td>
<td>(14) Chapman's Mortuary, Inc.</td>
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<td>(15) Cravens-Shires Funeral Homes, Inc.</td>
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<td>(16) Crow-Hussell Funeral Home, Inc.</td>
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<td>244</td>
<td>(17) Cunningham-Parker-Johnson Funeral Home</td>
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<td>(18) Davis Funeral Home, Inc.</td>
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<td>(19) Davis-Weaver Funeral Home</td>
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<td>(20) Dent Funeral Home, Inc.</td>
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<td>(21) Dodd &amp; Reed Funeral Home</td>
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<td>(22) Dodd-Payne-Hess Funeral Home</td>
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<td>(24) The Douglas Mortuary</td>
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<td>(25) Eckels Funeral Home</td>
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<td>(26) Elk Funeral Home</td>
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<td>254</td>
<td>(27) Evans Funeral Home (Oceana, WV)</td>
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<td>255</td>
<td>(28) Evans Funeral Home (Chapmanville, WV)</td>
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<td>(29) F. E. Runner Funeral Home</td>
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<td>(31) Franklin Funeral Chapel</td>
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<td>(32) Fred L. Jenkins Funeral Home</td>
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<td>(33) Frey Home for Funerals</td>
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<td>No.</td>
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<td>Business Name</td>
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<td>283</td>
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<td>Kepner Funeral Home</td>
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<td>(54)</td>
<td>Leonard Johnson Funeral Home, Inc.</td>
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<td>(55)</td>
<td>Long &amp; Fisher Funeral Homes, Inc.</td>
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<td>294</td>
<td>(56)</td>
<td>Masters Funeral Home</td>
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<tr>
<td>295</td>
<td>(57)</td>
<td>McGlumphy Mortuary, Inc.</td>
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<td>Melton Mortuary, Inc.</td>
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<td>(59)</td>
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<td>298</td>
<td>(60)</td>
<td>Memorial Funeral Directory, Inc.</td>
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<td>(61)</td>
<td>Morris Funeral Home, Inc.</td>
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<td>(62)</td>
<td>Mounts Funeral Home, Inc.</td>
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<td>306</td>
<td>(68)</td>
<td>Ronald Meadows Funeral Parlors</td>
</tr>
<tr>
<td>307</td>
<td>(69)</td>
<td>Rose &amp; Quesenberry</td>
</tr>
<tr>
<td>308</td>
<td>(70)</td>
<td>Ruttencutter Funeral Home</td>
</tr>
<tr>
<td>309</td>
<td>(71)</td>
<td>Schaeffer Funeral Home</td>
</tr>
<tr>
<td>310</td>
<td>(72)</td>
<td>Shaffer Funeral Home, Inc.</td>
</tr>
<tr>
<td>311</td>
<td>(73)</td>
<td>Shanklin Funeral Home, Inc.</td>
</tr>
<tr>
<td>312</td>
<td>(74)</td>
<td>Simons-Coleman Funeral Home</td>
</tr>
<tr>
<td>313</td>
<td>(75)</td>
<td>Sinnett Funeral Home</td>
</tr>
</tbody>
</table>
Ch. 46]  

Claims  

325  (76) Stevens & Grass  
326  Funeral Home $400.00  
327  (77) Stockert-Gibson  
328  Funeral Home $400.00  
329  (78) Tankersley Funeral Home, Inc. $400.00  
330  (79) Taylor Funeral Home $800.00  
331  (80) Tyree Funeral Home, Inc. $400.00  
332  (81) VanReenen Funeral Home $650.00  
333  (82) Waters Funeral Chapel $800.00  
334  (83) Wilcoxen Funeral Home $400.00  
335  (84) William McCulla  
336  Funeral Home $725.00  
337  (p) Claim against the  
338  Department of Labor:  
339  (TO BE PAID FROM GENERAL REVENUE FUND)  
340  (1) Chapman Printing Company $469.80  
341  (q) Claims against the Department  
342  of Motor Vehicles:  
343  (TO BE PAID FROM STATE ROAD FUND)  
344  (1) American Association  
345  of Motor Vehicle Administrators $63,270.64  
346  (2) Rita Brock $28.46  
347  (3) James Stephen Dent $45.00  
348  (4) T. H. Compton, Inc. $12,377.24  
349  (r) Claims against the Department  
350  of Natural Resources:  
351  (TO BE PAID FROM SPECIAL REVENUE FUND)  
352  from Acct. No. 8300-23  
353  (1) B. W. Painter, Inc., d/b/a  
354  Kentucky Fried Chicken $7,590.00  
355  (2) Moore Business Forms & Systems Division $4,212.92  
356  (s) Claims against the  
357  Department of Public Safety:  
358

CLAIMS

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Associated Physical Therapists, Inc. .... $381.00
(2) Associated Radiologists, Inc. ... $46.50
(3) Harold L. Casto, D.C. .... $320.00
(4) Davis Memorial Hospital .... $72.00
(5) Richard G. Gay .... $1,000.00
(6) Stephen Charles King .... $28.90
(7) Joseph F. Kyer .... $120.00
(8) Fred L. Morgan .... $180.27
(9) Orthopaedic Associates, Inc. .... $852.00
(10) Philip G. Pollice, M.D. .... $760.00
(11) Radiology, Inc. .... $7.56
(12) Roentgen Diagnostics, Inc. .... $27.00
(13) Martha Wolfe .... $395.00

(t) Claim against the
Division of Forestry:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Xerox Corporation .... $239.11

(u) Claim against the
Education and State
Employees Grievance Board:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Communications, Inc. .... $24.06

(v) Claims against the Human
Rights Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Theodore R. Dues .... $46,600.00
(2) Martha A. Hannah .... $190.00
(3) Tony Majestro, M.D. .... $200.00
(4) Jack Manning,
Sheriff/Treasurer
of Fayette County .... $5.00
(5) Phyllis Haynes Edens
CCR, Inc. .... $178.50

(w) Claims against the Nonintoxicating
Beer Commission:
(TO BE PAID FROM GENERAL REVENUE FUND)

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>399</td>
<td>Harry G. Camper, Jr.</td>
<td>$639.00</td>
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<tr>
<td>400</td>
<td>Billy Williams</td>
<td>$70.54</td>
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</table>

(x) **Claims against the Public**

**Employees Insurance Agency:**

<table>
<thead>
<tr>
<th>No.</th>
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</tr>
</thead>
<tbody>
<tr>
<td>404</td>
<td>Eastern Panhandle Transit Authority</td>
<td>$1,344.00</td>
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(y) **Claims against the Public**

**Service Commission:**

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<thead>
<tr>
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<th>Name</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>409</td>
<td>AT&amp;T Communications, Inc.</td>
<td>$152.30</td>
</tr>
<tr>
<td>410</td>
<td>Cole Office Environments</td>
<td>$813.00</td>
</tr>
<tr>
<td>411</td>
<td>Hamilton Business Systems, Inc.</td>
<td>$334.56</td>
</tr>
<tr>
<td>414</td>
<td>Jenner &amp; Block, an Illinois Partnership Including Professional Corporations</td>
<td>$73,775.52</td>
</tr>
</tbody>
</table>

(z) **Claim against the Secretary of State:**

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>419</td>
<td>The Monroe Watchman, Inc.</td>
<td>$90.00</td>
</tr>
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</table>

(aa) **Claims against the State Athletic Commission:**

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>423</td>
<td>Robert V. Lowery</td>
<td>$141.42</td>
</tr>
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</table>

(bb) **Claim against the State Fire Marshal:**

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>427</td>
<td>Arnold Corporation</td>
<td>$92.18</td>
</tr>
</tbody>
</table>

(cc) **Claims against the State Tax Department:**

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
</table>

| (TO BE PAID FROM GENERAL REVENUE FUND) |
CLAIMS

(1) Bell Atlanticom Systems, Inc. .......... $ 6,240.00
(2) Capitol Business Interiors ............ $ 842.86
(3) Gallatin National Bank ............... $ 27.50
(4) Betty G. Linger, R. Thomas
and R. B. Tracey, as
Tenants in Common, d/b/a
Morrison Building ............. $ 11,287.83
(5) Standard Register Company .......... $ 465.00

(d) Claims against the
State Treasurer:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) The Michie Company ............. $ 355.99
(2) The Monroe Watchman .............. $ 17.50
(3) Multigraphics, a Division of
A. M. International, Inc. ........ $ 255.06

(e) Claims against the
Supreme Court of Appeals:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Hamilton Business Systems .... $ 539.27
(2) C. Reeves Taylor ............... $ 3,189.75

(ff) Claim against the Workers’
Compensation Fund:

(TO BE PAID FROM WORKERS’ COMPENSATION FUND)

(1) G. Nicholas Casey ............ $ 7,611.04

(gg) Claim against the State of West Virginia:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Harry Lee Clayton ............. $ 35,000.00

The Legislature finds that the above moral obligations
and the appropriations made in satisfaction thereof shall
be the full compensation for all claimants, and that prior
to the payments to any claimant provided for in this bill,
the court of claims shall receive a release from said
claimant releasing any and all claims for moral
obligations arising from the matters considered by the
Legislature in the finding of the moral obligations and
466 the making of the appropriations for said claimant. The
467 court of claims shall deliver all releases obtained from
468 claimants to the department against which the claim
469 was allowed.

CHAPTER 47

(Com. Sub. for H. B. 4066—By Delegates Phillips and Rutledge)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred two, article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article two of said chapter by adding thereto a new section, designated section one hundred thirty-nine, all relating to providing a mechanism by which persons may recover damages from and prohibit unsolicited commercial telefacsimile transmissions; notice to initiator of transmission; and defining “facsimile device” and “commercial facsimile transmission.”

Be it enacted by the Legislature of West Virginia:

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

Article
1. Short Title, Definitions and General Provisions.
2. Consumer Credit Protection.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.


1 In addition to definitions appearing in subsequent articles, in this chapter: (1) “Actuarial method” means the method, defined by rules adopted by the commissioner, of allocating payments made on a debt between
principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. A "consumer credit agreement" is an agreement where credit is granted.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in land, less the amount of any down payment whether made in cash or in property traded in;

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this chapter.
(5) "Average daily balance" in a billing cycle for which a sales finance charge or loan finance charge is made is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

(6) The "cash price" of goods, services or an interest in land means the price at which the goods, services or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include (a) applicable sales, use, privilege, and excise and documentary stamp taxes, (b) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations and improvements, and (c) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

(7) "Closing costs" with respect to a debt secured by an interest in land include:

(a) Fees or premiums for title examination, title insurance or similar purposes including surveys;

(b) Fees for preparation of a deed, deed of trust, mortgage, settlement statement or other documents;

(c) Escrows for future payments of taxes and insurance;

(d) Official fees and fees for notarizing deeds and other documents;

(e) Appraisal fees; and

(f) Credit reports.

(8) "Code" means the official code of West Virginia, one thousand nine hundred thirty-one, as amended.

(9) "Commercial facsimile transmission" means the electronic or telephonic transmission in the state to a facsimile device to encourage a person to purchase goods, realty or services.
(10) "Commissioner" means the commissioner of banking of West Virginia.

(11) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(12) "Consumer" means a natural person who incurs debt pursuant to a consumer credit sale or a consumer loan.

(13) (a) Except as provided in paragraph (b), "consumer credit sale" is a sale of goods, services or an interest in land in which:
   (i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;
   (ii) The buyer is a person other than an organization;
   (iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;
   (iv) Either the debt is payable in installments or a sales finance charge is made; and
   (v) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

(b) “Consumer credit sale” does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement.

(14) (a) "Consumer lease" means a lease of goods:
   (i) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household or agricultural purpose;
   (ii) In which the amount payable under the lease does not exceed twenty-five thousand dollars; and
(iii) Which is for a term exceeding four months.

(b) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

(15) "Consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

(a) The debtor is a person other than an organization;

(b) The debt is incurred primarily for a personal, family, household or agricultural purpose;

(c) Either the debt is payable in installments or a loan finance charge is made; and

(d) Either the principal does not exceed twenty-five thousand dollars or the debt is secured by an interest in land.

(16) "Cosigner" means a natural person who assumes liability for the obligation on a consumer credit sale or consumer loan without receiving goods, services or money in return for the obligation or, in the case of a revolving charge account or revolving loan account of a consumer, without receiving the contractual right to obtain extensions of credit under the account. The term cosigner includes any person whose signature is requested as a condition to granting credit to a consumer or as a condition for forbearance on collection of a consumer’s obligation that is in default. The term cosigner does not include a spouse whose signature is required to perfect a security interest. A person who meets the definition in this paragraph is a “cosigner” whether or not the person is designated as such on the credit obligation.

(17) "Credit" means the privilege granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(18) "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise,
and includes periodic payments pursuant to a pension, retirement or disability program.

(19) "Facsimile device" means a machine that receives and copies reproductions or facsimiles of documents or photographs that have been transmitted electronically or telephonically over telecommunications lines.

(20) "Federal Consumer Credit Protection Act" means the "Consumer Credit Protection Act" (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that act.

(21) "Goods" includes goods not in existence at the time the transaction is entered into and gift and merchandise certificates, but excludes money, chattel paper, documents of title and instruments.

(22) "Home solicitation sale" means a consumer credit sale in excess of twenty-five dollars in which the buyer receives a solicitation of the sale at a place other than the seller's business establishment at a fixed location and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting open-end credit account with the seller in existence for at least three months prior to the transaction, a sale made pursuant to prior negotiations between the parties at the seller's business establishment at a fixed location, a sale of motor vehicles, mobile homes or farm equipment or a sale which may be rescinded under the Federal Truth in Lending Act (being Title I of the Federal Consumer Credit Protection Act). A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for in whole or in part by a consumer loan in which the creditor is subject to claims and defenses arising from the sale.

(23) Except as otherwise provided, "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender.

(24) "Lender credit card or similar arrangement"
193 means an arrangement or loan agreement, other than
194 a seller credit card, pursuant to which a lender gives
195 a debtor the privilege of using a credit card, letter of
196 credit, or other credit confirmation or identification in
197 transactions out of which debt arises:
198 (a) By the lender’s honoring a draft or similar order
199 for the payment of money drawn or accepted by the
200 consumer;
201 (b) By the lender’s payment or agreement to pay the
202 consumer’s obligations; or
203 (c) By the lender’s purchase from the obligee of the
204 consumer’s obligations.
205 (25) “Loan” includes:
206 (a) The creation of debt by the lender’s payment of or
207 agreement to pay money to the consumer or to a third
208 party for the account of the consumer other than debts
209 created pursuant to a seller credit card;
210 (b) The creation of debt by a credit to an account with
211 the lender upon which the consumer is entitled to draw
212 immediately;
213 (c) The creation of debt pursuant to a lender credit
214 card or similar arrangement; and
215 (d) The forbearance of debt arising from a loan.
216 (26) (a) “Loan finance charge” means the sum of (i) all
217 charges payable directly or indirectly by the debtor and
218 imposed directly or indirectly by the lender as an
219 incident to the extension of credit, including any of the
220 following types of charges which are applicable: Interest
221 or any amount payable under a point, discount, or other
222 system of charges, however denominated, premium or
223 other charge for any guarantee or insurance protecting
224 the lender against the consumer’s default or other credit
225 loss; and (ii) charges incurred for investigating the
226 collateral or credit worthiness of the consumer or for
227 commissions or brokerage for obtaining the credit,
228 irrespective of the person to whom the charges are paid
229 or payable, unless the lender had no notice of the
230 charges when the loan was made. The term does not
include charges as a result of default, additional charges, delinquency charges or deferral charges.

(b) If a lender makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

(27) "Merchandise certificate" or "gift certificate" means a writing issued by a seller or issuer of a seller credit card, not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(28) "Official fees" means:

(a) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating or satisfying a security interest related to a consumer credit sale or consumer loan; or

(b) Premiums payable for insurance or fees escrowed in a special account for the purpose of funding self-insurance or its equivalent in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease or loan, if such premium or fee does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(29) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(30) "Payable in installments" means that payment is required or permitted by agreement to be made in (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a sales finance charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no sales finance charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If
any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale or consumer loan is “payable in installments.”

(31) “Person” or “party” includes a natural person or an individual, and an organization.

(32) “Person related to” with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister or sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or his spouse, and (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. “Person related to” with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

(33) “Precomputed loan.” A loan, refinancing or consolidation is “precomputed” if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(34) “Precomputed sale.” A sale, refinancing or consolidation is “precomputed” if the debt is expressed as a sum comprising the amount financed and the amount of the sales finance charge computed in advance.

(35) “Presumed” or “presumption” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(36) “Principal” of a loan means the total of:

(a) The net amount paid to, receivable by or paid or payable for the account of the debtor;
(b) The amount of any discount excluded from the loan finance charge; and
(c) To the extent that payment is deferred:
(i) Amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and
(ii) Additional charges permitted by this chapter.

(37) "Revolving charge account" means an agreement between a seller and a buyer by which (a) the buyer may purchase goods or services on credit or a seller credit card, (b) the balances of amounts financed and the sales finance and other appropriate charges are debited to an account, (c) a sales finance charge if made is not precomputed but is computed periodically on the balances of the account from time to time, and (d) there is the privilege of paying the balances in installments.

(38) "Revolving loan account" means an arrangement between a lender and a consumer including, but not limited to, a lender credit card or similar arrangement, pursuant to which (a) the lender may permit the consumer to obtain loans from time to time, (b) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (c) a loan finance charge if made is not precomputed but is computed periodically on the outstanding unpaid balances of the principal of the consumer's account from time to time, and (d) there is the privilege of paying the balances in installments.

(39) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

(40) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other
payments previously made by him are applied to the purchase price.

(41) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(42) "Sales finance charge" means the sum of (a) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or issuer of a seller credit card as an incident to the extension of credit, including any of the following types of charges which are applicable: Time-price differential, however denominated, including service, carrying or other charge, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss, and (b) charges incurred for investigating the collateral or credit worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable; unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges. If the seller or issuer of a seller credit card purchases or satisfies obligations of the consumer and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the sales finance charge.

(43) Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller.

(44) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, that person and any other person or persons, a person related to that person, or others licensed or franchised or permitted to do business under his business name or trade name or designation or on his behalf.
(45) "Services" includes (a) work, labor and other personal services, (b) privileges with respect to transportation, use of vehicles, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

(46) "Supervised financial organization" means a person, other than a supervised lender or an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorizes the person to make consumer loans; and

(b) Subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.

(47) "Supervised lender" means a person authorized to make or take assignments of supervised loans.

(48) "Supervised loan" means a consumer loan made by other than a supervised financial organization, including a loan made pursuant to a revolving loan account, where the principal does not exceed two thousand dollars, and in which the rate of the loan finance charge exceeds eight percent per year as determined according to the actuarial method.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-139. Unlawful commercial facsimile transmission; right of action for injunction, damages.

(a) No person or organization may initiate an unsolicited commercial facsimile transmission from within this state to another person or organization within this state after the initiator has been given notice that the recipient does not wish to receive such unsolicited commercial facsimile transmissions.

(b) A recipient of an unsolicited commercial facsimile transmission initiated in violation of subsection (a) of this section may bring an action to recover actual
10 damages for any injury sustained by the receipt of
unsolicited commercial facsimile transmissions. In lieu
of actual damages, a minimum damage assessment of
three hundred dollars may be recovered for violations
of this section. Punitive damages may be awarded for
15 the willful failure to cease initiating unsolicited
commercial facsimile transmissions. Court costs and
reasonable attorney fees may be awarded for violations
of this section.

19 (c) A recipient of an unsolicited commercial facsimile
transmission initiated in violation of subsection (a) of
this section may bring an action to enjoin the initiator
from sending any further unsolicited commercial
facsimile transmissions to the recipient. Any court costs
or other costs incident to such action including reasona-
ble attorney fees may be awarded.

(d) In any proceeding under this section, an unsoli-
cited commercial facsimile transmission may be deemed
to have been committed either at the place of initiation
or at the place of receipt of such transmission.

(e) For purposes of this section, notice shall be
sufficient which conveys to the initiator of the unsoli-
cited commercial transmission a desire on the part of
the recipient to receive no further unsolicited commer-
cial facsimile transmissions and shall be served by
certified mail, return receipt requested, or by facsimile
transmission.

CHAPTER 48
(H. B. 4577—By Delegates Rowe and Shepherd)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one hundred two and
one hundred three, article two, chapter forty-six-a of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to the West Virginia
Consumer Credit and Protection Act provisions render-
ing certain assignees and lenders subject to claims and
defenses; defining the extent of liability of such assignees and lenders; providing that certain limitations on such liability shall apply to claims or defenses founded in fraud arising on or after the first day of July, one thousand nine hundred ninety; and eliminating expired statutory language.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-102. Assignee subject to claims and defenses.

§46A-2-103. Lender subject to claims and defenses arising from sales.

§46A-2-102. Assignee subject to claims and defenses.

The following provisions shall be applicable to instruments, contracts or other writings, other than negotiable instruments, evidencing an obligation arising from a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose: (1) Notwithstanding any term or agreement to the contrary or the provisions of article two, chapter forty-six of this code or section two hundred six, article nine of said chapter forty-six, an assignee of any such instrument, contract or other writing shall take and hold such instrument, contract or other writing subject to all claims and defenses of the buyer or lessee against the seller or lessor arising from that specific consumer credit sale or consumer lease of goods or services but the total of all claims and defenses which may be asserted against the assignee under this subsection or subsection (3) or subsection (4) of this section shall not exceed the amount owing to the assignee at the time of such assignment except (i) as to any claim or defense founded in fraud: Provided, That as to any claim or defense founded in fraud arising on or after the first day of July, one thousand nine hundred ninety, the total sought shall not exceed the amount of the original obligation under the instrument, contract or other
writing and (ii) for any excess charges and penalties recoverable under section one hundred one, article five of this chapter.

(2) For the purpose of determining the amount owing to an assignee of any such instrument, contract or other writing evidencing an obligation of a buyer or lessee arising from a consumer credit sale or consumer lease:

(a) Payments received after the consolidation of two or more consumer credit sales, other than pursuant to a revolving charge account, are deemed to have been first applied to the payment of the sales first made; if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smaller or smallest sale or sales;

(b) Payments received upon a revolving charge account are deemed to have been first applied to the payment of sales finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(3) A claim or defense which a buyer or lessee may assert against an assignee of such instrument, contract or other writing under the provisions of this section may be asserted only as a matter of defense to or setoff against a claim by the assignee: Provided, That if a buyer or lessee shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or setoff against a claim by the assignee were such assignee to assert such claim against the buyer or lessee, then such buyer or lessee shall have the right to institute and maintain an action or proceeding seeking to obtain the cancellation, in whole or in part, of the indebtedness evidenced by such instrument, contract or other writing or the release, in whole or in part, of any lien upon real or personal property securing the payment thereof: Provided, however, That any claim or defense founded in fraud, lack or failure of consideration or a violation of the provisions of this chapter as specified in section one hundred one, article five of this chapter, may be
asserted by a buyer or lessee at any time, subject to the provisions of this code relating to limitation of actions.

(4) Notwithstanding any provisions of this section, an assignee shall be subject to any claim or defense based upon lack or failure of consideration.

(5) Nothing contained in this section shall be construed as affecting any buyer’s or lessee’s right of action, claim or defense which is otherwise provided for in this code or at common law.

(6) Nothing contained in this section shall be construed in any manner as affecting any assignment of any such instrument, contract or other writing, made prior to the operative date of this chapter.

(7) Notwithstanding any provisions of this section, an assignee shall not be subject to any claim or defense arising from or growing out of personal injury or death resulting therefrom or damage to property.

§46A-2-103. Lender subject to claims and defenses arising from sales.

(a) The following provisions shall be applicable to claims and defenses of borrowers, arising from consumer sales, with respect to consumer loans:

A lender, other than the issuer of a lender credit card, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a borrower to buy goods or services, other than primarily for an agricultural purpose, is subject to all claims and defenses of the borrower against the seller arising from that specific sale of goods or services if the lender participates in or is connected with the sales transaction. A lender is considered to be connected with such sales transaction if:

(i) The lender and the seller have arranged for a commission or brokerage or referral fee for the extension of credit by the lender;

(ii) The lender is a person related to the seller unless the relationship is remote or is not a factor in the transaction;
(iii) The seller guarantees the loan or otherwise assumes the risk of loss by the lender upon the loan other than a risk of loss arising solely from the seller's failure to perfect a lien securing the loan;

(iv) The lender directly supplies the seller with documents used by the borrower to evidence the transaction or the seller directly supplies the lender with documents used by the borrower to evidence the transaction;

(v) The loan is conditioned upon the borrower's purchase of the goods or services from the particular seller, but the lender's payment of proceeds of the loan to the seller does not in itself establish that the loan was so conditioned;

(vi) The seller in such sale has specifically recommended such lender by name to the borrower and the lender has made ten or more loans to borrowers within a period of twelve months within which period the loan in question was made, the proceeds of which other ten or more loans were used in consumer credit sales with the seller or a person related to the seller, if in connection with such other ten or more loans, the seller also specifically recommended such lender by name to the borrowers involved; or

(vii) The lender was the issuer of a credit card other than a lender credit card which may be used by the borrower in the sale transaction as a result of a prior agreement between the issuer and the seller.

(b) The total of all claims and defenses which a borrower is permitted to assert against a lender under the provisions of this section shall not exceed that portion of the loan used for that sale, except (1) as to any claim or defense founded in fraud: Provided, That as to any claim or defense founded in fraud arising on or after the first day of July, one thousand nine hundred ninety, the total sought shall not exceed the original amount of the sale and (2) for any excess charges and penalties recoverable under section one hundred one, article five of this chapter.
(c) An agreement may not limit or waive the claims and defenses of a borrower under this section.

(d) "Lender credit card" as used in this section means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using the credit card in transactions which entitles the user thereof to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card, out of which debt arises:

(1) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;

(2) By the lender's payment or agreement to pay the consumer's obligation; or

(3) By the lender's purchase from the obligee of the consumer's obligations.

(e) A claim or defense which a borrower may assert against a lender under the provisions of this section may be asserted only as a defense to or setoff against a claim by the lender: Provided, That if a borrower shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or setoff against a claim by the lender were such lender to assert such claim against the borrower, then the borrower shall have the right to institute and maintain an action or proceeding seeking to obtain the cancellation, in whole or in part, of the indebtedness evidenced by a negotiable instrument or other instrument or the release, in whole or in part, of any lien upon real or personal property securing the payment thereof: Provided, however, That any claim or defense founded in fraud, lack or failure of consideration or a violation of the provisions of this chapter as specified in section one hundred one, article five of this chapter, may be asserted by a borrower at any time, subject to the provisions of this code relating to limitation of actions.

(f) Nothing contained in this section shall be construed in any manner as affecting any loan made prior to the operative date of this chapter.
(g) Notwithstanding any provisions of this section, a lender shall not be subject to any claim or defense arising from or growing out of personal injury or death resulting therefrom or damage to property.

(h) Nothing contained in this section shall be construed as affecting any buyer's or lessee's right of action, claim or defense which is otherwise provided for in this code or at common law.

CHAPTER 49
(H. B. 2537—By Mr. Speaker, Mr. Chambers, and Delegate Sattes)

[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred twenty-eight, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consumer credit protection; and increasing the recovery of attorney's fees and collection costs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-128. Unfair or unconscionable means.

1 No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

2 (a) The seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;
(b) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt, without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(c) The collection or the attempt to collect from the consumer all or any part of the debt collector's fee or charge for services rendered: Provided, That attorney's fees, court costs and other reasonable collection costs and charges necessary for the collection of any amount due upon delinquent educational loans made by any institution of higher education within this state may be recovered when the terms of the obligation so provide. Recovery of attorney's fees and collection costs may not exceed thirty-three and one-third percent of the amount due and owing to any such institution: Provided, however, That nothing contained in this subsection shall be construed to limit or prohibit any institution of higher education from paying additional attorney fees and collection costs as long as such additional attorney fees and collection costs do not exceed an amount equal to five percent of the amount of the debt actually recovered and such additional attorney fees and collection costs are deducted or paid from the amount of the debt recovered for the institution or paid from other funds available to the institution;

(d) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and by statute; and

(e) Any communication with a consumer whenever it appears that the consumer is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question or unless the attorney consents to direct communication.
AN ACT to amend and reenact section one hundred nine, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to finance charges and related provisions—additional charges; insurance; requiring the refund to debtors of unused insurance premiums upon payment in full of debt; and providing civil penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-109. Additional charges; insurance; when refund required; civil penalty.

1 In addition to the sales finance charge or loan finance charge permitted by this chapter, a creditor may contract for and receive the following additional charges in connection with a consumer credit sale or a consumer loan:

2 (a) Official fees and taxes;

3 (b) Charges for insurance as described in subsection (2): Provided, That nothing contained in this section with respect to insurance shall be construed as in any way limiting the power and jurisdiction of the insurance commissioner of this state in the premises;

4 (c) Annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which
the debts resulting from the purchases are payable to the issuer;

(d) Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him/her and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the sales finance charge or loan finance charge by rule adopted by the commissioner: Provided, That as to insurance, the policy as distinguished from a certificate of coverage thereunder must be issued by an individual licensed under the laws of this state to sell such insurance and the determination of whether the charges therefor are reasonable in relation to the benefits shall be determined by the insurance commissioner of this state; and

(e) Reasonable closing costs with respect to a debt secured by an interest in land.

(2) A creditor may take, obtain or provide reasonable insurance on the life and earning capacity of any consumer obligated on the consumer credit sale or consumer loan, reasonable insurance on any real or personal property offered as security subject to the provisions of this subsection, and vendor's or creditor's single interest insurance with respect to which the insurer has no right of subrogation. Only one policy of life insurance and/or one policy of health and accident insurance and/or one policy of accident insurance and/or one policy of loss of income insurance on any one consumer may be in force with respect to any one contract or agreement at any one time, but one policy may cover both a consumer and his/her spouse:

(a) The amount, terms and conditions of property insurance shall have a reasonable relation to the existing hazards or risk of loss, damage or destruction and be reasonable in relation to the character and value of the property insured or to be insured; and the term of such insurance shall be reasonable in relation to the terms of credit: Provided, That nothing shall be deemed to prohibit the consumer from obtaining, at his/her option,
greater coverages for longer periods of time if he/she so desires;

(b) Life insurance shall be in an initial amount not to exceed the total amount repayable under the consumer credit agreement, and where a consumer credit sale or consumer loan is repayable in installments, such insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Life insurance authorized by this subdivision shall provide that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness: Provided, That if a separate charge is made for such insurance and the amount of insurance exceeds the unpaid indebtedness, where not prohibited, then such excess shall be payable to the estate of the consumer.

The initial term of such life insurance in connection with a consumer credit sale, other than a sale pursuant to a revolving charge account, or in connection with a consumer loan, other than a loan pursuant to a revolving loan account, shall not exceed the scheduled term of the consumer credit agreement by more than fifteen days.

The aggregate amount of periodic benefits payable by credit accident and health insurance in the event of disability, as defined in the policy, and loss of income insurance in the event of involuntary loss of employment, as defined in the policy, shall not exceed the unpaid amount of such indebtedness; periodic benefits payable in connection with a consumer credit sale pursuant to a revolving charge account or of a consumer loan pursuant to a revolving loan account may be based upon the authorized credit limit;

(c) When the insurance is obtained or provided by or through a creditor, the creditor may collect from the consumer or include as part of the cash price of a consumer credit sale or as part of the principal of a consumer loan, or deduct from the proceeds of any consumer loan the premium, or in the case of group insurance, the identifiable charge. The premium or identifiable charge for such insurance required or obtained by a creditor may equal, but shall not exceed, the premium rate filed by the insurer with the insu-
ranced commissioner. In any case, when the creditor collects the entire premium for such insurance in advance, such premium shall be remitted by such creditor to the insurer or the insurance agent, as specified by the insurer, within ten days from or after the end of the month in which such collection was made; 

(d) With respect to insurance against loss of or damage to property, or against liability, the creditor shall furnish a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the debtor may choose the person through whom the insurance is to be obtained; 

(e) With respect to consumer credit insurance providing life, accident, health or loss of income coverage, no creditor shall require a consumer to purchase such insurance or to purchase such insurance from such creditor or any particular agent, broker or insurance company as a condition precedent to extending credit to or on behalf of such consumer; and 

(f) With respect to consumer credit insurance providing life, accident, health or loss of income coverage, and when a consumer credit sale or consumer loan, refinancing or consolidation is paid in full, the creditor receiving such payment shall inform the debtor of his/her right to cancel any such insurance and to receive a refund of unearned premiums: Provided, That notice shall be sent in a form as prescribed by the commissioner as provided in chapter twenty-nine-a of this code. Such notice shall contain the name and address of the seller and the insurer. On the request of the debtor-insured of the seller of such insurance, the seller shall notify or shall cause the insurer to be notified of the debtor-insured's request for cancellation of such insurance. On receipt by the insurer of notification of the debtor-insured's requested cancellation of such insurance, the insurer shall cancel such insurance effective no later than thirty days from the date of payment in full of such consumer credit sale, consumer loan, refinancing or consolidation. Within forty-five days following the date of notification of cancellation of such insurance and if the debtor-
140 insured has not received repayment of or a credit for
141 the amount of any unearned premiums by the seller of
142 such insurance, the insurer shall pay any refund of
143 unearned premiums to the debtor-insurer or such other
144 person as directed by the debtor-insurer. An insurer,
145 seller or creditor who fails to refund any unused
146 insurance premium or provide the proper notification of
147 payoff shall be liable for civil damages up to three times
148 the amount of the unused premium as well as other
149 remedies as provided for by section one hundred nine,
150 article seven of this chapter.

CHAPTER 51
(Com. Sub. for S. B. 5—By Senators Spears, J. Manchin, Brackenrich and Boley)

[Passed March 8, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to repeal section one hundred sixteen, article seven, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repealing the section creating the consumer affairs advisory council of the consumer protection division of the office of the attorney general.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. ADMINISTRATION.

§1. Repeal of section relating to consumer affairs advisory council.

Section one hundred sixteen, article seven, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
CHAPTER 52
(S. B. 609—Originating in the Committee on Finance)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and one-a, article eleven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty, article twenty, chapter thirty-one; to amend and reenact sections one, two and four-a, article three, chapter fifty; and to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code, all relating to the regional jail and prison development fund administered by the regional jail and correctional facilities authority; increasing maximum aggregate amount of indebtedness said authority may issue; increasing fees for filing civil actions in circuit and magistrate courts; creating filing fee schedule for civil actions in magistrate courts; increasing costs charged in criminal proceedings in circuit, magistrate and municipal courts, and requiring payment of increased amounts of such fees and costs into regional jail and prison development fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter
50. Magistrate Courts.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.
CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines against nonresidents.

§8-11-1a. Disposition of criminal costs into state treasury account for regional jail and prison development fund.

To carry into effect the powers and authority conferred upon any municipality or its governing body by the provisions of this chapter, or any past or future act of the Legislature of this state, the governing body shall have plenary power and authority to make and pass all needful ordinances, orders, bylaws, acts, resolutions, rules and regulations not contrary to the constitution and laws of this state; and, for a violation thereof, to prescribe reasonable penalties in the form of fines, forfeitures and imprisonment in the county jail or the place of imprisonment in such municipality, if there be one, for a term not exceeding thirty days. Such fines, forfeitures and imprisonment shall be recovered, imposed or enforced under the judgment of the mayor of such municipality or the individual lawfully exercising his functions, or the police court judge or municipal court judge of a city, if there be one, and may be suspended upon such reasonable conditions as may be imposed by such mayor, other authorized individual or judge. Any municipality may also maintain a civil action in the name of the municipality in the circuit court of the county in which the municipality or the major portion of the territory thereof is located to obtain an injunction to compel compliance with, or to enjoin a violation or threatened violation of, any ordinance of such municipality, and such circuit court shall have jurisdiction to grant the relief sought. A certified
transcript of a judgment for a fine rendered by a municipal court may be filed in the office of the clerk of a circuit court and docketed in the judgment lien book kept in the office of the clerk of the county commission in the same manner and with the same effect as the filing and docketing of a certified transcript of judgment rendered by a magistrate court as provided for in section two, article six, chapter fifty of this code. The judgment shall include costs assessed against the defendant. In addition to any other costs which may be lawfully imposed, an additional cost shall be imposed in an amount of not less than forty-two dollars in each proceeding, except that such additional cost shall not be assessed for a traffic offense that is not a moving violation, or an offense for which the ordinance does not provide for a period of incarceration. Of the forty-two dollars imposed as an additional cost, two dollars shall be an administrative cost to be retained by the municipality.

Execution shall be by fieri facias issued by the clerk of the circuit court in the same manner as such writs are issued on judgments for a fine rendered by circuit courts or other courts of record under the provisions of section eleven, article four, chapter sixty-two of this code.

§8-11-1a. Disposition of criminal costs into state treasury account for regional jail and prison development fund.

The clerk of each municipal court, or such person designated to receive fines and costs, 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 the costs collected in each proceeding, except for traffic offenses that are not moving violations: Provided, That in a case where a defendant has failed to pay all costs assessed against him, no payment shall be made to the regional jail and prison development fund unless and until the defendant has paid all costs which, when paid, are available for the use and benefit of the municipality.
CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-20. Authorized limit on borrowing.

1 The aggregate principal amount of notes, security interests and bonds issued by the authority may not exceed two hundred million dollars outstanding at any one time. In computing the total amount of notes, security interests and bonds which may be outstanding at any one time, the principal amount of any outstanding notes, security interests and bonds refunded or to be refunded either by application of the proceeds of the sale of any refunding notes, security interests or refunding bonds of the authority or by exchange for any such notes, security interests or refunding bonds shall be excluded. The state board of investments may have invested no more than a total aggregate principal amount of fifteen million dollars at any one time in such notes, security interests or bonds.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-1. Costs in civil actions.

1 The following costs shall be charged in magistrate courts in civil actions and shall be collected in advance:

(a) For filing and trying any civil action and for all services connected therewith, but excluding services regarding enforcement of judgment, the following amounts dependent upon the amount of damages sought in the complaint:

Where the action is for five hundred dollars or less ................................... $20.00

Where the action is for more than five hundred dollars but not more than one thousand dollars ......................... $25.00
Where the action is for more than one thousand dollars but not more than two thousand dollars.......................... $30.00
Where the action is for more than two thousand dollars.......................... $40.00
Where the action seeks relief other than money damages.......................... $20.00
(b) For each service regarding enforcement of a judgment including execution, suggestion, garnishment and suggestee execution.......................... $ 5.00
(c) For each bond filed in a case.......................... $ 1.00
(d) For taking deposition of witness for each hour or portion thereof.......................... $ 1.00
(e) For taking and certifying acknowledgment of a deed or other writing or taking oath upon an affidavit.......................... $ .50
(f) For mailing any matter required or provided by law to be mailed by certified or registered mail with return receipt.......................... $ 1.00
Costs incurred in a civil action shall be reflected in any judgment rendered thereon. The provisions of section one, article two, chapter fifty-nine of this code, relating to the payment of costs by poor persons, shall be applicable to all costs in civil actions.

§50-3-2. Costs in criminal proceedings.

In each criminal case tried in a magistrate court in which the defendant is convicted, there shall be imposed, in addition to such other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of fifty dollars. No such costs shall be collected in advance.

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

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

§50-3-4a. Disposition of criminal costs and civil filing fees
into state treasury account for regional jail
and prison development fund.

1 The clerk of each magistrate court shall, at the end
2 of each month, pay into the regional jail and prison
3 development fund in the state treasury an amount equal
4 to forty dollars of the costs collected in each criminal
5 proceeding and all but ten dollars of the costs collected
6 for the filing of each civil action.

CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.

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 civil actions and fees for services in
criminal cases.

§59-1-11. Fees to be charged by clerk of circuit court.

1 The clerk of a circuit court shall charge and collect
2 for services rendered as such clerk the following fees,
3 and such fees shall be paid in advance by the parties
4 for whom such services are to be rendered:

5 For instituting any civil action under the rules of civil
6 procedure, any statutory summary proceeding, any
7 extraordinary remedy, the docketing of civil appeals, or
8 any other action, cause, suit or proceeding, seventy
9 dollars: Provided, That the fee for instituting an action
10 for divorce shall be twenty dollars plus the fee required
11 by section six, article two-c, chapter forty-eight of this
12 code.

13 In addition to the foregoing fees, the following fees
14 shall likewise be charged and collected:

15 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, twenty-five cents;

For action on suggestion, five dollars;

For issuing an execution, two dollars;

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;

For vacation or modification of a suggestee execution, one dollar;

For docketing and issuing an execution on a transcript of judgment from magistrate's court, three dollars;

For arranging the papers in a certified question, writ of error, appeal or removal to any other court, five dollars;

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;

For each witness summons over and above five, on the part of either plaintiff or defendant, to be paid by the party requesting the same, twenty-five cents;

For additional services (plaintiff or appellant) where any case remains on the docket longer than three years, for each additional year or part year, five dollars.

The clerk shall tax the following fees for services in any criminal case against any defendant convicted in such court:

In the case of any misdemeanor, fifty dollars;

In the case of any felony, sixty dollars;

No such clerk shall be required to handle or accept for disbursement any fees, costs or accounts, 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 civil actions and fees for services in criminal cases.

(a) 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 sixty dollars of every filing fee received for instituting any civil action 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: Provided, That in actions for divorce, the clerk shall pay into such fund an amount equal to ten dollars of the filing fee for instituting such actions.

(b) 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.

CHAPTER 53
(H. B. 4559—By Delegates Ashley and Rowe)

[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter twenty-five of said code by adding thereto a new article, designated article five; and to amend and reenact sections eight, nine, ten and twelve, article five, chapter sixty-one of said code, all relating to disallowing an award from the crime victims compensation fund for any victim if the injury occurred while the victim was confined in any state, county or city jail, prison, private prison or correctional facility; relating to the private prison enabling and contracting act; granting authority to the commissioner of the division of corrections; granting authority to the
secretary of the department of public safety; prohibiting the operation of a private prison without the approval of the secretary; prohibiting the construction, modification, lease or alteration of a private prison without the approval of the regional jail authority; granting authority for the state or its political subdivisions to contract with private prisons for correctional services; granting the private prison contractor the ability to contract with foreign authorities for correctional services; allowing private prison contractors to house certain foreign inmates within West Virginia; limitations; requiring the contractor to report to the commissioner of the division of corrections and to appropriate foreign authorities regarding public information, inspections, crimes, extraordinary or unusual occurrences; mandating that certain records of the private prison be deemed public records; requiring the terms of the contract include provisions for security, discipline, adherence to rules of the commissioner, proper provisions for inmates, requiring the contractor and the contracting agency hold the state and its political subdivisions harmless, requiring the contractor to indemnify the state, requiring the contractor to transport an inmate back to the sending state for parole, furlough or release; allowing the regional jail authority to approve the site of a proposed facility; allowing for an exemption from regional jail authority approval for the Spencer state hospital location; providing for the standards of operation of the facility; requiring that services and programs meet the standards of the jail and correctional facility standards commission; requiring that the prison operations comply with all federal, state and local laws, rules, regulations, or ordinances, building, safety and health codes; providing a mechanism for notices of violations, assessing penalties, providing for a maximum dollar limit for violations and penalties, criteria for determining dollar amount; relating to hearing requirements and informal hearings; providing for a hearing board; providing for access by the contracting agency or the commissioner to the prison facility; creating a special fund; providing for reimbursement of expenses of inspections by the commissioner;
requiring annual report; providing for restrictions on the use of the defense of sovereign immunity; providing that certain powers and duties are not delegable to the contractor; providing for community service by inmates; requiring bonding; requiring insurance and the criteria therefor; prohibiting self-insurance; requiring indemnification to the state from the contractor; providing for approval of firearms training program; relating to the capture of escapees; providing that nonresident private correctional officers be deemed residents in certain circumstances; relating to employee training requirements and preference; requiring reimbursement to the state and its political subdivisions for expenses incurred in the recapture of escapees and the detention thereof; defining the offense of aiding escape from a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense of delivering anything to a person in the custody of a jail, prison, private prison, juvenile facility or juvenile detention center with the intent to aid or facilitate or attempt escape therefrom or for forcibly rescuing or attempting to rescue therefrom and providing criminal penalties therefor; defining the offense of delivering money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind to an adult or inmate confined in a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor, exceptions; defining the offense of the transportation of alcoholic liquor, nonintoxicating beer, poison, explosive, firearm or other dangerous or deadly weapon or any controlled substance onto the grounds of jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense of delivery of alcoholic liquor, nonintoxicating beer, poison, explosive, firearms or other dangerous or deadly weapon or any controlled substance to a person in the custody of a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense for the purchase, acceptance as a
542 Corrections [Ch. 53

gift, securing by barter, trade or in any other manner, any article or articles manufactured at or belonging to any jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor, exceptions; defining the offense of persuading, inducing or enticing or attempting to persuade, induce or entice any person confined in a jail, prison, private prison, juvenile facility or juvenile detention center to escape therefrom or to engage or aid in any insubordination to the authority of any jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense for a jailer or other officer or private correctional officer for permitting escape or refusing to receive custody and providing criminal penalties therefor; defining the offense of breaking or escaping by force, violence, or by any subterfuge, device or deception from a jail or private prison by a convicted or unconvicted prisoner and providing criminal penalties therefor; defining the offense of the abduction or persuading, inducing or enticing escape from a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; defining the offense of concealment or harboring of an inmate or patient from a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; providing for the return of fugitives; defining the offense of trespassing, idling, lounging or loitering on the grounds of state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; defining the offense of communicating or attempting to communicate, by signals, signs, writings or otherwise with an inmate or patient, or conveying or assisting in any way establishing communication with an inmate or patient of a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor, exceptions; defining the offense of intent to defraud, purchase, accept gifts, secure by barter or trade, or in any other manner, any article of clothing from an inmate or patient of a state benevolent
or correctional institution, private prison or mental
health facility and providing criminal penalties there­
for, exceptions.

Be it enacted by the Legislature of West Virginia:

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

Chapter
14. Claims Due and Against the State.
25. Division of Corrections.
61. Crimes and Their Punishment.

CHAPTER 14. CLAIMS DUE AND
AGAINST THE STATE.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF
CRIMES.

§*14-2A-14. Grounds for denial of claim or reduction of
award; maximum awards; awards for
emotional distress; mental anguish, etc.

(a) Except as provided in subsection (b), section ten
of this article, the judge or commissioner shall not
approve an award of compensation to a claimant who
did not file his application for an award of compensation
within two years after the date of the occurrence of the
criminally injurious conduct that caused the injury or
death for which he is seeking an award of compensation.

(b) An award of compensation shall not be approved
if the criminally injurious conduct upon which the claim
is based was not reported to a law-enforcement officer
or agency within seventy-two hours after the occurrence
of the conduct, unless it is determined that good cause
existed for the failure to report the conduct within the
seventy-two hour period.

(c) The judge or commissioner shall not approve an
award of compensation to a claimant who is the offender

*Clerk's Note: §14-2A-14 was also amended by H. B. 4256 (Chapter 67),
which passed subsequent to this act.
or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his accomplice. Unless a determination is made that the interests of justice require that an award be approved in a particular case, an award of compensation shall not be made to the spouse of, or to a person living in the same household with, the offender or accomplice of the offender, or to the parent, child, brother or sister of the offender or his accomplice.

(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies, or the claim investigator, may deny a claim, reduce an award of compensation, and may reconsider a claim already approved.

(e) An award of compensation shall not be approved if the injury occurred while the victim was confined in any state, county or city jail, prison, private prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing such approval, the judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the clerk of the court of claims. The judge or commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if such reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant’s economic loss being recouped by the collateral source: Provided, That if it is thereafter determined that the claimant will not receive all or part of the expected
recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g) Except in the case of death, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim shall not exceed thirty-five thousand dollars in the aggregate. Compensation payable to a victim of criminally injurious conduct which causes permanent injury may include, in addition to economic loss, an amount up to fifteen thousand dollars for emotional distress and pain and suffering which are proximately caused by such conduct. Compensation payable to all claimants because of the death of the victim shall not exceed fifty thousand dollars in the aggregate, but may include, in addition to economic loss, compensation to the claimants specified in paragraph (2), subdivision (a), section three of this article, for sorrow, mental anguish and solace.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 5. PRIVATE PRISONS.

§25-5-1. Short title.
§25-5-2. Legislative findings and purpose.
§25-5-4. Authority of the commissioner of the division of corrections; authority of secretary of department of public safety.
§25-5-5. Prohibition of constructing or operating a correctional facility; exceptions.
§25-5-6. Authority of the state and its political subdivisions to contract for correctional services.
§25-5-7. Granting private contractor ability to contract with foreign contracting agencies.
§25-5-8. Reporting requirements.
§25-5-10. Site selection.
§25-5-11. Standards of operation; violations.
§25-5-12. Access by contracting agency, commissioner; reimbursement of expenses; report by commissioner.
§25-5-17. Liability; indemnification.
§25-5-18. Firearms; capture of escapees; nonresident private correctional officers.
§25-5-19. Employee training requirements; preference.

§25-5-1. Short title.

1 This article shall be known as “The Private Prison Enabling and Contracting Act.”

§25-5-2. Legislative findings and purpose.

The Legislature hereby finds that adequate and modern prison facilities are essential to the safety and welfare of the people of this state and other states, and that contracting for portions of governmental services is a viable alternative for this state and its political subdivisions.

Further, the Legislature finds that allowing for the establishment of private prison facilities is an economic development opportunity for local communities and will augment the general revenue fund.


As used in this article, unless the context clearly requires a different meaning, the term:

(a) “Commissioner” means the commissioner of the division of corrections.

(b) “Contracting agency” means the appropriate governmental agency with the authority to enter into a contract with a prison vendor for correctional services. A contracting agency shall include, but not be limited to, the state of West Virginia and its political subdivisions, the federal government, any federal agency, one or more of the remaining United States, or a political subdivision of one or more of the remaining United States.

(c) “Correctional services” means the following functions, services and activities, when provided within a prison or otherwise:

(1) Design and modification or construction of prison facilities;
(2) Education, training and jobs programs;
(3) Development and implementation of systems for the classification of inmates and management information systems or other information systems or services;
(4) Food services, commissary, medical services, transportation, sanitation or other ancillary services;
(5) Counseling, special treatment programs or other programs for special needs;
(6) Recreational, religious or other activities; and
(7) Operation of correctional facilities, including management, custody of inmates, and providing security.

(d) "Division" means the division of corrections of the department of public safety of West Virginia.

(e) "Foreign" in the context of a foreign state or other unit of government means any state or political subdivision or the District of Columbia or the federal government or a federal agency other than the state of West Virginia and its political subdivisions.

(f) "Inmate" means an individual sentenced to incarceration by a court or contracting agency.

(g) "Prison contractor" or "contractor" or "prison vendor" means any individual, partnership, corporation, unincorporated association or any other nongovernmental entity which is licensed to do business in the state of West Virginia and which has or will enter into a contractual agreement with a contracting agency to provide correctional services.

(h) "Prison" or "prison facility" or "facility" means any minimum or medium or maximum adult correctional institution operated under the authority of the division or of a political subdivision of this state, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means.

(i) "Private correctional officer" means any full-time or part-time employee of a prison vendor whose primary
(j) "Regional jail authority" means the West Virginia regional jail and correctional facility authority created by article twenty, chapter thirty-one of this code.

(k) "Secretary" means the secretary of the department of public safety.

(l) "State" means the state of West Virginia.

§25-5-4. Authority of the commissioner of the division of corrections; authority of secretary of department of public safety.

(a) The commissioner of the division of corrections shall promulgate rules, in accordance with chapter twenty-nine-a of this code, to implement the provisions of this article.

(b) The commissioner shall have the authority to recommend or to not recommend to the secretary that a prison vendor be granted the privilege of operating a prison facility in this state.

(c) The commissioner shall have the authority to issue notices of violations, assess penalties and proceed in the collection of money due the state by private contractors.

(d) The secretary of the department of public safety may, upon the recommendation of the commissioner, grant approval for a prison vendor to operate a private prison in this state.

(e) The commissioner shall have the authority to accept the custody of and to confine inmates from sentencing authorities located outside the state of West Virginia.

(f) The commissioner shall have the authority to expend funds contained in the private prison fund, established pursuant to subdivision (2), subsection (g), section eleven of this article, to cover any and all expenses incurred because of private prison operations within the state.
§25-5-5. Prohibition of constructing or operating a correctional facility; exceptions.

1 (a) No person may operate a private prison facility or provide correctional services in this state without first obtaining the written approval of the secretary.

2 (b) No person may construct, modify, lease, or otherwise alter a private prison facility without first obtaining the written approval of the regional jail authority.

3 (c) Nothing in this section shall impair the right of the state or its political subdivisions to operate a prison facility or provide correctional services.

4 (d) No private contractor may operate a correctional facility in this state for the confinement of maximum security inmates sentenced to a term of incarceration by a foreign court.

§25-5-6. Authority of the state and its political subdivisions to contract for correctional services.

1 A contracting agency of this state, its political subdivisions or their designee may contract with a prison contractor for the construction, lease, acquisition, improvement, operation, and management of correctional facilities and services.

§25-5-7. Granting private contractor ability to contract with foreign contracting agencies.

1 A private contractor upon the approval of the secretary and the regional jail authority may contract for correctional services with foreign contracting agencies provided such contract meets the minimal requirements contained in section nine of this article. Upon approval the facility may receive inmates sentenced to confinement by a foreign authority.

§25-5-8. Reporting requirements.

1 The contractor shall prepare the following information and submit it to the commissioner, as applicable:

2 (1) The prison vendor shall develop and implement a plan for the dissemination of information about the facility to the public, government agencies and the
media. This information shall be made available to all persons. All documents and records, except financial records, inmate records and personnel records, maintained by the prison vendor, shall be deemed public records.

(2) The facility shall comply with all applicable laws and regulations of the local and state government regarding sanitation, food service, safety and health. Copies of inspections completed by the appropriate authorities shall be sent by the contractor to the division.

(3) The facility shall report for investigation all crimes in connection with the facility to the division of public safety and all other political subdivisions’ law-enforcement agencies having jurisdiction where the prison is located. A written report shall be made of all extraordinary or unusual occurrences and forwarded to the commissioner. Extraordinary or unusual occurrences shall include, but not be limited to:

(A) Death of an inmate or staff member;
(B) Attempted suicide or suicide;
(C) Serious injury, whether accidental or self-inflicted;
(D) Attempted escape or escape from confinement;
(E) Fire;
(F) Riot;
(G) Battery, whether by a staff member or inmate;
(H) Sexual assaults; and
(I) Occurrence of contagious diseases.


Contracts awarded under the provisions of this article shall:

(1) Provide for internal and perimeter security to protect the public, staff members and inmates.
(2) Impose discipline on inmates only in accordance with the rules promulgated by the commissioner.
(3) Provide for proper food, clothing, housing, and medical care for inmates.

(4) Require that a contractor shall adhere to the rules promulgated by the commissioner.

(5) Require that the contractor and the contracting agency shall indemnify, defend and hold harmless the state, its agencies, political subdivisions, and the employees and other contractors of the state, its agencies and political subdivisions from any claim or cause of action which arises from any act or omission by the contractor or any of the contractor’s employees or subcontractors.

(6) Require the contractor to indemnify the state or its political subdivisions for any moneys the state or its political subdivisions may expend for claims against the state or its political subdivisions pursuant to section seventeen of this article.

(7) Require a foreign contracting agency to transport an inmate back to the contracting agency’s state for parole, furlough or release.

§25-5-10. Site selection.

(a) The regional jail authority shall approve the site for the proposed facility. Approval shall be in accordance with legislative rules promulgated in accordance with chapter twenty-nine-a of this code. One such legislative rule shall establish criteria for identifying and evaluating potential sites for private prisons and shall provide for a public hearing or hearings to allow reasonable participation in the selection process by the citizens of the area to be affected by the construction and operation of a private prison.

(b) Notwithstanding the provisions of subsection (a) of this section, the Legislature hereby approves the site at the former Spencer state hospital for a private prison facility: Provided, That the contractor shall comply with the remaining provisions of this article: Provided, however, That the contractor shall not be required to comply with subsection (b) of section five of this article: Provided further, That the contractor shall
not be required to obtain the approval of the regional jail authority as required by section seven of this article.

§25-5-11. Standards of operation; violations.

(a) The facility shall be staffed at all times. The staffing pattern shall be adequate to ensure intense supervision of inmates and maintenance of security within the facility. The staffing pattern shall address the facility’s operations and programs, transportation and security needs. In determining security need, considerations shall include, but not be limited to, the proximity of the facility to neighborhoods and schools.

(b) The facility shall provide the following services and programs which shall be consistent with the standards of the jail and correctional facilities standards commission:

(1) Health and medical services;

(2) Food services;

(3) Mail, telephone use, and visitation;

(4) Access to legal services and legal materials;

(5) Vocational training;

(6) Educational programs;

(7) Counseling services including personal counseling;

(8) Drug and alcohol counseling; and

(9) Sanitation services.

(c) In addition to the requirements of subsections (a) and (b) of this section, all facilities governed by this article shall be designed, constructed and at all times maintained and operated in accordance with standards and rules of the jail and correctional facility standards commission pursuant to section nine, article twenty, chapter thirty-one of the code of West Virginia, as amended: Provided, That any more stringent requirements mandated by the commissioner shall be complied with.

(d) All facilities governed by this article shall at all
times comply with all applicable federal and state constitutional standards, all applicable federal laws and rules and regulations, state laws and rules and local ordinances, building, safety and health codes.

(e) If any of the requirements of subsection (d) of this section have not been complied with, the commissioner may cause a notice of violation to be served upon the contractor or his duly authorized agent. A copy of the notice shall be handed to the contractor or his duly authorized agent in person or served by United States certified mail, return receipt requested, addressed to the contractor at the permanent address shown on the application for approval to operate a prison facility. The notice shall specify in what respects the contractor has failed to comply with subsection (d) and shall specify a reasonable time for abatement of the violation not to exceed fifteen days. If the contractor has not abated the violation within the time specified in the notice, or any reasonable extension thereof, which extension is not to exceed seventy-five days, the commissioner shall assess a penalty as hereinafter provided. If a violation is not abated within the time specified or any extension thereof, a mandatory civil penalty of not less than five hundred dollars per day per violation shall be assessed until the violation is abated.

(f) Any contractor who violates any part of subsection (d) may also be assessed an additional civil penalty in the discretion of the commissioner. The penalty shall not exceed five hundred dollars per day. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, the commissioner shall consider the contractor's history of previous violations at the particular facility, the seriousness of the violation, including any hazard to the health or safety of the public, whether the contractor was negligent, and the demonstrated good faith of the contractor in attempting to achieve timely compliance after notification of the violation.

(g) (1) Upon the issuance of a notice or order pursuant to this section, the commissioner shall, within thirty
74 days, set a proposed penalty assessment and notify the contractor in writing of such proposed penalty assessment. The proposed penalty assessment must be paid in full within thirty days of receipt thereof or, if the contractor desires to contest the violation, an informal conference with the commissioner may be requested within fifteen days or a formal hearing before three members of the regional jail authority, who are appointed by the secretary to hear cases pursuant to this article, may be requested within thirty days. The notice of proposed penalty assessment shall advise the contractor of the right to an informal conference or a formal hearing pursuant to this section. When an informal conference is requested, the contractor shall have fifteen days from receipt of the commissioner's decision resulting therefrom to request a formal hearing before three members of the regional jail authority.

(A) When an informal conference is held, the commissioner shall have authority to affirm, modify or vacate the notice, order or proposed penalty assessment.

(B) Formal hearings shall be subject to the provisions of article five, chapter twenty-nine-a of this code. Following the hearing, the three regional jail authority members may affirm, modify or vacate the notice, order or proposed penalty assessment and, when appropriate, incorporate an assessment order requiring that the assessment and costs of the proceedings be paid.

(2) Civil penalties under this section may be recovered by the commissioner in the circuit court in the county where the facility is located or in the circuit court of Kanawha County. Civil penalties collected under this article shall be deposited with the state treasurer to the credit of the division of corrections in a special revenue fund to be known as the "Private Prison Fund," which is hereby created.

§25-5-12. Access by contracting agency, commissioner; reimbursement of expenses; report by commissioner.

(a) The commissioner shall cause to be made such inspections of prison facilities as are necessary to effectively enforce the requirements of this article. The
commissioner or his authorized representative or a contracting agency shall have access to all areas of the facility and to inmates and staff at all times. The contractor shall provide to the commissioner any and all data, reports, and other materials that the commissioner determines are necessary to carry out inspections pursuant to this article.

(b) The contractor shall reimburse the division of corrections for expenses incurred for inspections. Such reimbursement shall be payable to the division of corrections.

(c) The commissioner shall report on the performance of contractors operating within this state, no less frequently than annually, until the year one thousand nine hundred ninety-three and thereafter as requested by either the speaker of the House of Delegates, the president of the Senate, the regional jail authority or the governor. Upon such request, the report shall be submitted to the speaker of the House of Delegates, to the president of the Senate, to the regional jail authority and to the governor.


The sovereign immunity of the state shall not extend to the contractor or its insurer.


(a) No contract for correctional services may authorize, allow or imply a delegation of the authority or responsibility of the contracting agency to a prison contractor for any of the following:

(1) Developing or implementing procedures for calculating inmate release and parole eligibility dates;

(2) Developing or implementing procedures for calculating and awarding good time;

(3) Approving inmates for work release;

(4) Approving the type of work inmates may perform and the wages or good time, if any, which may be given to inmates engaging in such work;
(5) Granting, denying or revoking good time; and

(6) Recommending that the contracting state's parole authority either deny or grant parole, although the contractor may submit written reports that have been prepared in the ordinary course of business.

(b) Notwithstanding the provisions of subsection (a) of this section, the contractor may use inmates for community service upon the request and approval of the political subdivision where the prison is located.


A contractor shall give a performance bond payable to the state of West Virginia, in a form satisfactory to the commissioner, executed by a surety company qualified to do business in this state and in the penal sum, as determined by the commissioner, in an amount not less than one hundred thousand dollars. The bond shall be conditioned on the contractor performing all the requirements of this article and the rules promulgated hereunder.


(a) The contractor shall provide an adequate policy of insurance specifically including insurance for civil rights claims as determined by a risk management or actuarial firm with demonstrated experience in public liability for state governments. In determining the adequacy of the policy, such risk management or actuarial firm shall determine whether:

(1) The insurance is adequate to protect the state, its political subdivisions or other contracting agencies from actions by a third party against the contractor;

(2) The insurance is adequate to protect the state, its political subdivisions or contracting agencies against claims arising as a result of any occurrence; and

(3) The insurance is adequate to satisfy other requirements specified by the risk management or actuarial firm.

(b) The insurance contract shall contain a provision
that the state, its political subdivisions and contracting agencies are named insureds, and that the state, its political subdivisions and contracting agencies shall be sent any notice of cancellation.

(c) The contractor shall not self-insure.

§25-5-17. Liability; indemnification.

A contractor which has been approved to operate a facility pursuant to this article shall indemnify, defend and hold harmless the state, its officers, agents, and employees, and any local government entity in the state having jurisdiction over the facility or ownership of the facility from:

(1) Any claims or losses for services rendered by the contractor or person performing or supplying services in connection with the performance of the contract;

(2) Any claims or losses to any person injured or damaged by the willful or negligent acts of the contractor, its officers or employees in the operation of a private prison or in the performance of the contract;

(3) Any claims or losses resulting to any person injured or damaged by the private contractor, its officers or employees by the publication, translation, reproduction, delivery, performance, use or disposition of any data processed under the contract in a manner not authorized by the contract, or by federal or state regulations or statutes;

(4) Any failure of the contractor, its officers or employees to adhere to West Virginia laws, including, but not limited to, labor laws and minimum wage laws;

(5) Any constitutional, federal, state or civil rights claim brought against the state related to the prison facility;

(6) Any claims, losses, demands or causes of action arising out of the contractor's activities in this state; and

(7) Any attorney's fees or court costs arising from any habeas corpus actions or other inmate suits which may arise, including, but not limited to, attorney's fees for
the state's representation as well as for any court
appointed representation of any inmate as well as the
costs of any special judge who may be appointed to hear
such actions.

§25-5-18. Firearms; capture of escapees; nonresident
private correctional officers.

(a) Private correctional officers of a private contrac-
tor shall be authorized to carry and use firearms in the
course of their employment only after completing a
training course, approved by the commissioner, in the
use of firearms in accordance with rules promulgated
by the division.

(b) Upon notification by the contractor of an escape
from the facility or a disturbance at the facility, the
state shall use all reasonable means to recapture
escapees or quell any disturbance.

(c) When acting within the scope of their normal
employment at the private prison facility, nonresident
private correctional officers shall be deemed residents
for purposes of section eleven, article six, chapter sixty-
one of this code.

§25-5-19. Employee training requirements; preference.

(a) All employees of a facility operated pursuant to
this article shall receive training in a program approved
by the commissioner. All training expenses shall be the
responsibility of the contractor.

(b) West Virginia residents shall be given a hiring
preference for positions at the facilities permitted to
operate in accordance with this article.


Any cost incurred by the state or its political subdi-
visions relating to the apprehension of an escapee or the
quelling of a disturbance at the facility shall be
chargeable to and borne by the contractor. The contrac-
tor shall also reimburse the state or its political
subdivisions for all reasonable costs incurred relating to
the temporary detention of the escapee following
recapture.
CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§ 61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody, imprisoned or in detention; penalties.

(a) Where any adult or juvenile is lawfully detained in custody or as an inmate or prisoner in any jail, prison or private prison or as a resident of any juvenile facility or juvenile detention center, if any other person shall deliver anything into the jail, prison, private prison, facility or juvenile detention center or other place of custody of such adult or juvenile with the intent to aid or facilitate such adult's or juvenile's escape or attempted escape therefrom, or if such other person shall forcibly rescue or attempt to rescue such adult or juvenile therefrom, such other person is guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.

(b) Where any adult or juvenile is lawfully detained in custody or as an inmate or prisoner in any jail, prison or private prison or as a resident of any juvenile facility or juvenile detention center, if any other person shall deliver any money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind to such adult or juvenile without the express authority and permission of the jailer, warden, private correctional officer or other supervising officer and with knowledge that such adult or juvenile is so lawfully detained, such other person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars and imprisoned in the county jail not less than three nor
more than twelve months: *Provided*, that nothing herein
shall preclude an attorney or any of his or her employees
from supplying to such detainee any written or printed
material which pertains to that attorney’s representa-
tion of said detainee.

(c) If any person transports any alcoholic liquor,
nonintoxicating beer, poison, explosive, firearm or other
dangerous or deadly weapon or any controlled substance
as defined by chapter sixty-a of this code onto the
grounds of any jail or prison, or private prison or
juvenile facility or detention center within this state and
is unauthorized by law to do so, or is unauthorized by
the administration of said jail or prison, or private
prison or juvenile facility or detention center, such
person is guilty of a felony, and, upon conviction thereof,
shall be fined not less than one thousand nor more than
five thousand dollars or imprisoned in the penitentiary
not less than one year nor more than five years, or, in
the discretion of the court, be confined in the county jail
not more than one year and shall be fined not more than
five hundred dollars.

(d) If any person delivers any alcoholic liquor,
nonintoxicating beer, poison, explosive, firearm or other
dangerous or deadly weapon, or any controlled sub-
stance as defined by chapter sixty-a of this code to an
inmate or prisoner in any jail, prison or private prison
or to any resident of any juvenile facility or juvenile
detention center within this state and is unauthorized by
law to do so, or is unauthorized by the administration
of said jail or prison, or private prison or juvenile
facility or detention center, such person is guilty of a
felony, and, upon conviction thereof, shall be fined not
less than one thousand nor more than five thousand
dollars or imprisoned in the penitentiary not less than
one year nor more than five years.

(e) Whoever purchases, accepts as a gift, or secures by
barter, trade or in any other manner, any article or
articles manufactured at or belonging to any jail, prison,
or private prison, juvenile facility or juvenile detention
center from any inmate, prisoner or resident detained
therein is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than fifty dollars nor
more than five hundred dollars and imprisoned in the
county jail not less than three nor more than twelve
months: Provided, That this subsection (e) shall not
apply to articles specially manufactured in such jail,
prison, or private prison, juvenile facility or juvenile
detention center under the authorization of the admin-
istration of such jail, prison, private prison, juvenile
facility or juvenile detention center for sale inside or
outside of such jail, prison, private prison, juvenile
facility or juvenile detention center.

(f) Whoever persuades, induces or entices or attempts
to persuade, induce or entice, any person who is an
inmate or prisoner in any jail, prison, private prison or
resident of any juvenile facility or juvenile detention
center to escape therefrom or to engage or aid in any
insubordination to the authority of such jail, prison,
private prison, juvenile facility or juvenile detention
center is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than fifty dollars nor
more than five hundred dollars and imprisoned in the
county jail not less than three nor more than twelve
months.

§61-5-9. Permitting escape; refusal of custody of prisoner;
penalties.

1 If a jailer or other officer, or private correctional
officer aid or voluntarily suffer a prisoner convicted or
charged with felony to escape from his custody, he shall
be deemed guilty of a felony, and, upon conviction, shall
be confined in the penitentiary not less than one nor
more than five years. If any such jailer or other officer,
or private correctional officer negligently, but not
voluntarily, suffer a person convicted of or charged with
felony, or voluntarily or negligently suffer a person
convicted of or charged with an offense not a felony, to
escape from his custody, or willfully refuse to receive
into his custody any person lawfully committed thereto,
he shall be guilty of a misdemeanor, and, upon convic-
tion, shall be confined in jail not less than six months,
or be fined not exceeding one thousand dollars, or both
such fine and confinement.
§61-5-10. Jail or private prison breaking by convicted or unconvicted prisoner; penalties.

(a) Any person confined in jail on conviction of a criminal offense, who escapes therefrom by force, violence, or by any subterfuge, device or deception, shall, if previously sentenced to confinement in the penitentiary, be guilty of a felony, and, upon conviction, shall be confined in the penitentiary for not less than one nor more than five years; and if he be previously sentenced to confinement in jail, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail one year.

(b) If any person be lawfully confined in jail or private prison and not sentenced on conviction of a criminal offense, shall escape therefrom by any means, such person shall, (i) if he be confined upon a charge of a felony, be guilty of an additional felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, or (ii) if he be confined upon a charge of a misdemeanor, be guilty of an additional misdemeanor, and, upon conviction thereof, shall be confined in jail one year.

(c) If any person is lawfully confined in a private prison and escapes therefrom by force, violence, or by any subterfuge, device or deception, he or she shall be guilty of a felony, and, upon conviction, shall be imprisoned for not less than one nor more than five years.

§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.

Except where otherwise provided, whoever abducts any person who is an inmate or patient of any state benevolent or correctional institution, private prison or mental health facility shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than five years. Whoever persuades, induces or entices, or attempts to persuade, induce or entice, any person who
is an inmate or patient of any such institution, private prison or facility to escape therefrom, or whoever conceals or harbors any such person, knowing him or her to have run away from any such institution, private prison or facility, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, and in addition thereto, in the discretion of the court, may be imprisoned in the county jail not less than one nor more than six months.

Any fugitive from any state benevolent or correctional institution, private prison or mental health facility, may, on the order of the superintendent or other officer of such institution or facility, be arrested and returned to such institution or facility, or to any officer or agent thereof, by any sheriff, police officer or other person, and may also be arrested and returned by any officer or agent of such institution, private prison or facility.

Whoever trespasses, idles, lounges or loiters upon the grounds of any other state benevolent or correctional institution, private prison or mental health facility or communicates, or attempts to communicate, by signals, signs, writings or otherwise with any inmate or patient of such institution, private prison or facility, or conveys or assists in any way in establishing communication between an inmate or patient of such institution, private prison or facility and any person or persons outside thereof, except as authorized by the rules or regulations in force by the authority governing the same, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty nor more than five hundred dollars, or imprisoned not less than ten nor more than thirty days in the county jail, or both, in the discretion of the court or magistrate. Whoever, with intent to defraud, purchases, accepts as a gift, or secures by barter or trade, or in any other manner, any article of clothing from an inmate or patient of any state benevolent or correctional institution, private prison or mental health facility issued to him or her, by any officer of such institution or facility, or by any private correctional officer of such private prison for his or her use,
or, with such intent, secures any other article or articles
belonging to any inmate or patient of such institution, private
prison or facility or to such institution, private prison or facility from an inmate or patient thereof,
shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined a sum not less than double the value of such articles, except that in no case shall the fine be less than one hundred dollars. Magistrates shall have jurisdiction of all misdemeanors included in this paragraph, concurrently with the circuit court.

CHAPTER 54
(H. B. 4007—By Delegates Love and Schadler)

[Passed February 2, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-2. Reestablishment of division; findings.

1 Pursuant to the provisions of section four, article ten, chapter four of this code, the division of corrections shall continue to exist until the first day of July, one thousand nine hundred ninety-one, to allow for the completion of an audit by the joint committee on government operations.
AN ACT to amend article one, chapter twenty-five 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 permitting the commissioner of the division of corrections to monitor telephone calls from inmates and patients of penal or correctional institutions; providing for procedures and restrictions; providing an exception for calls to attorneys; and granting the commissioner authority to promulgate legislative rules.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-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 seventeen, to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-17. Monitoring of inmate and patient telephone calls; procedures and restrictions; calls to attorneys excepted.

(a) The commissioner of corrections or his or her designee shall have authority to monitor, intercept, record, and disclose any telephone calls from an adult inmate or patient of any state penal or correctional institution in accordance with the following provisions:

(1) All adult inmates or patients of the state penal or correctional institutions shall be notified in writing that their telephone conversations may be monitored, intercepted, recorded, and disclosed;

(2) Except as provided for in this subsection, only the commissioner and his or her designee shall have access to any such recordings of telephone calls;

(3) A notice shall be prominently placed on or immediately near every telephone on which monitoring may take place;
(4) The contents of a telephone conversation shall be disclosed only if the disclosure is:

(A) Necessary to safeguard the orderly operation of the penal or correctional institution;
(B) Necessary for the investigation of a crime;
(C) Necessary for the prevention of a crime;
(D) Necessary for the prosecution of a crime; or
(E) Required by an order of a court of competent jurisdiction;

(5) All recordings of telephone conversations, unless being disclosed in accordance with the preceding subdivision, shall be destroyed within twelve months after the recording; and

(6) To safeguard the sanctity of the attorney-client privilege, a separate telephone line shall be made available and no conversation between an inmate or patient and an attorney shall be monitored, intercepted, recorded or disclosed in any manner.

(b) The commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code for such monitoring, intercepting, recording or disclosing of telephone calls.

(c) The provisions of this section shall only apply to those persons serving a sentence of imprisonment while imprisoned in a facility under the direction of the commissioner of corrections.

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CHAPTER 56

(H. B. 2259—By Delegate Wilson)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections nine, ten and eleven, article one, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to payment by counties of costs of detention of youths by commissioner of corrections.
Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

§1. Repeal of sections relating to payment by counties of costs of detention of youths by commissioner of corrections.

Sections nine, ten and eleven, article one, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.

CHAPTER 57
(Com. Sub. for S. B. 438—By Senator Chafin, By Request)

[Passed March 7, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend and reenact sections thirteen and fourteen, article five-b, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the maximum amount allowed on deposit in the prison industries account; and appropriation for buildings, equipment, etc.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. PRISON-MADE GOODS.

§28-5B-13. Appropriation for buildings, equipment, etc.; self-liquidating contracts.

§28-5B-14. Prison industries account.

§28-5B-13. Appropriation for buildings, equipment, etc.; self-liquidating contracts.

In order to carry out the provisions of this article there is hereby appropriated out of the moneys in the state fund, general revenue, not otherwise appropriated, the sum of fifty thousand dollars, and the commissioner
of the division of corrections is authorized to expend
such moneys from such appropriation as may be
necessary to erect buildings, to purchase equipment, to
procure tools, supplies and materials, to purchase,
install or replace equipment, to employ personnel, and
otherwise to defray the necessary expenses incident to
the employment of convicts as herein provided, and
further to aid in the above purposes the commissioner
of the division of corrections is empowered to enter into
contracts and agreements with any person or persons
upon a self-liquidating basis respecting the acquisition
and purchase of any such equipment, tools, supplies and
materials, to the end that the same may be paid for over
a period of not exceeding three years, and the aggregate
amount of such purchases or acquisitions not to exceed
one million dollars, such amounts to be payable solely
out of the revenues derived from the activities autho-
ized by this article. Nothing in this section shall be so
construed or interpreted as to authorize or permit the
incurring of a state debt of any kind or nature as
contemplated by the constitution of this state in relation
to such debt.

§28-5B-4. Prison industries account.

All moneys collected by the commissioner of the
division of corrections from the sale or disposition of
articles and products manufactured or produced by
convict labor in accordance with the provisions of this
article, shall be forthwith deposited with the state
treasurer to be there kept and maintained as a special
revolving account designated the “prison industries
account” and such moneys so collected and deposited
shall be used solely for the purchase of manufacturing
supplies, equipment, machinery and materials used to
carry out the purposes of this article, as well as for the
payment of the necessary personnel in charge thereof
and to otherwise defray the necessary expenses incident
thereto, all of which are under the direction and subject
to the approval of the commissioner: Provided, That the
“prison industries account” shall never be maintained in
excess of the amount necessary to efficiently and
properly carry out the intentions of this article, and in
no event may the “prison industries account” be
maintained in excess of the sum of one million dollars.
When, in the opinion of the governor, the “prison
industries account” has reached a sum in excess of the
requirements of this article, the excess shall be trans-
ferred by the commissioner of the division of corrections
to the state fund, general revenue, and if the governor
does not make such determination, any excess above one
million dollars shall be transferred to the state fund,
general revenue, by the commissioner of the division of
corrections at the end of each fiscal year.

CHAPTER 58
(H. B. 4553—By Delegates Otte and McKinley)

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article two,
chapter fifty-one of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to extending the January term of court in Ohio County
for one month.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1a. First circuit.

1 For the county of Ohio, on the second Monday in
2 January, May and September.

3 For the county of Brooke, on the first Monday in
4 March, June and November.

5 For the county of Hancock, beginning with the month
6 of September, one thousand nine hundred thirty-three,
7 on the Tuesday after the second Monday in January,
8 April and September.
CHAPTER 59
(H. B. 4679—By Delegates Prezioso and C. Starcher)

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-p, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the date of the terms of court for the sixteenth judicial circuit in Marion County.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1p. Sixteenth circuit.

For the county of Marion, on the second Monday in February, June and October.

CHAPTER 60
(H. B. 4121—By Delegates Berry and Roop)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preservation and destruction of papers filed in circuit courts; authorizing the establishment of a “Record Retention Schedule” for circuit court files; and authorizing storage of permanent record series by electronic as well as microphotographic means.

Be it enacted by the Legislature of West Virginia:

That section three, article four, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 4. GENERAL PROVISIONS RELATING TO CLERKS OF COURTS.

§51-4-3. Preservation and destruction of papers; microphotography and electronic storage.

1 All papers lawfully returned to or filed in the clerk's office shall be preserved therein, subject to the conditions set out herein, until legally delivered out.

2 Notwithstanding any other provision of this code to the contrary, the clerk may destroy all documents, records, instruments, books, papers, depositions and transcripts in any action or proceeding in the circuit court or other court of record, or otherwise filed in his office pursuant to law, provided that:

3 (a) Destruction is done in accordance with a "Record Retention Schedule" to be adopted, promulgated and amended, from time to time, by the Supreme Court of Appeals; and

4 (b) The clerk maintains for the use of the public a microphotographic film or electronic storage media record of all documents required to be permanently preserved under the "Record Retention Schedule," together with an index and a mechanical or electronic device by which such microphotographic film or electronic storage media record may be conveniently examined. The clerk shall promptly seal and store at least one original of each microphotographic film or electronic storage media record in such manner and place as will reasonably assure its preservation indefinitely against loss, theft, defacement, intentional alteration, fire or other destruction. Any electronic method used must provide an exact copy of each document so stored and must be secure to the point that an attempt to alter a document is readily recognized.

5 A photographic reproduction or electronic media reproduction of any of the records described in this section, the negative or film or electronic record of which has been certified by the clerk in charge of such reproduction as being an exact replica of the original, shall be received in evidence in all courts, and in
hearings before any officer, board or commission having jurisdiction or authority to conduct such hearings, in like manner as the original.

CHAPTER 61
(S. B. 22—By Senator Chafin)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing court reporter original fees and fees for copies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-4. Transcript of notes; fees; authenticity; transcript for judge in criminal cases.

The reporter shall furnish, upon request, to any party to a case, a typewritten transcript of his shorthand notes of the testimony or other proceedings, which shall be upon paper measuring eight and one-half inches in width and eleven inches in length, with margins of one-half inch on the right side and bottom, one inch at the top and one and one-half inches on the left, with the page filled as completely as practicable, with at least twenty-four complete lines on each page, with no more than double spacing used between lines, with no more than five spaces used for indentation from the left margin, with no larger than ten point pica type being used, and shall certify the same as being correct and shall be paid therefor, by the party requesting such transcript, at the rate of two dollars for each page so transcribed and certified; and for each carbon copy of such transcript, ordered at the same time, he shall be paid seventy-five cents for each page so furnished: Provided, That if any transcript shall not conform with the specifications set
forth in this section, the party requesting the transcript shall not be obligated to pay for said transcript.

A transcript of such testimony or proceedings, when certified by the official reporter and by the judge of the court, shall be authentic for all purposes, and shall be used by the parties to the cause in any further proceeding wherein the use of the same may be required. It may be used, without further authentication, in making up the record on appeal, as provided in sections thirty-six and thirty-seven, article six, chapter fifty-six of this code; and in all cases of appeal such reporter shall also make a carbon copy of such transcript, which copy shall be filed in the office of the clerk of the court in which the trial or proceedings were had, to be used, if necessary, in making up the record on appeal, and, if so used, the clerk shall not be entitled to any fee for that part of the record. If, upon appeal or writ of error, the judgment, decree or order entered in the cause be reversed, the cost of such transcript shall be taxed as other costs; and if such transcript be requested or required for the purpose of demurring to the evidence, the cost thereof shall be taxed in favor of the party prevailing on the demurrer.

It shall also be the duty of such reporter in any criminal case, upon the request of the court or the judge thereof, and for his use, to furnish a transcript of his notes of the testimony and proceedings without extra charge.

CHAPTER 62
(S. B. 307—By Senators Chafin and Jackson)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend and reenact sections four, sixteen and seventeen, article five, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the time period for petitioning for an appeal from, or writ of error or supersedeas to a judgment, decree or order, and
reducing other time limitations related to such petitions; providing for the dismissal of an appeal, writ of error or supersedeas upon failure to timely give bond; specifying the persons to whom a copy or copies of the record shall be delivered; and requiring that an unsuccessful party on appeal be assessed with the costs associated with the printing or reproduction of the copies of the documents submitted in support of, or in opposition to, any appeal.

Be it enacted by the Legislature of West Virginia:

That sections four, sixteen and seventeen, article five, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-4. Time for appeal or writ of error; notice of intent to file petition in criminal cases to be filed with clerk stating grounds.

No petition shall be presented for an appeal from, or writ of error or supersedeas to, any judgment, decree or order, whether the state be a party thereto or not, which shall have been rendered or made more than four months before such petition is filed with the clerk of the court where the judgment, decree or order being appealed was entered: Provided, That the judge of the circuit court may, prior to the expiration of such period of four months, by order entered of record extend and reextend such period for such additional period or periods, not to exceed a total extension of two months, for good cause shown, if the request for preparation of the transcript was made by the party seeking such appellate review within thirty days of the entry of such judgment, decree or order.

In criminal cases no petition for appeal or writ of
§58-5-16. Time for giving bond.

An appeal, writ of error or supersedeas allowed from or to a final judgment, decree or order shall be dismissed whenever it appears that two months have elapsed since the date when the appeal, writ of error or supersedeas was granted before such bond is given as is required to be given before the appeal, writ of error or supersedeas takes effect.

§58-5-17. Court to prescribe method and form of reproducing record; reproduction of record by clerk; distribution; costs.

The supreme court of appeals shall by order prescribe the method and form of reproducing records. Such order shall prescribe the number of copies to be reproduced, the contents thereof, the type size and quality of paper and the maximum rate per page that may be charged for the printing or reproduction of such records.

The cost of printing or reproduction, photostating and blueprinting, if any, shall be included at the end of the record with the date the same was printed or otherwise reproduced.

The clerk shall have the record printed or reproduced when the party obtaining the appeal, writ of error or supersedeas shall deposit with him a sufficient sum to pay for same. The clerk shall deliver one copy to counsel on each side and retain the remaining copies in his office. He shall cause all copies of the record remaining in his office to be compared with the typewritten transcript certified to the supreme court of appeals and correct all errors that may appear therein. The cost of such printing or reproduction, unless otherwise ordered by the court, shall be taxed against the unsuccessful
party. In every felony and misdemeanor case, the clerk shall have the usual number of records printed or otherwise reproduced at a cost not exceeding the amount fixed by the court, and dispose of the same as in other cases; and upon the certificate of the chief justice of the supreme court of appeals stating that such record has been printed or otherwise reproduced as required by the court, and the amount said clerk is entitled to, the cost of printing or reproducing the same shall be paid to said clerk out of the treasury of the state, and the auditor shall draw his warrant on the treasury for the payment thereof out of the fund for criminal charges.

Any increased rate for printing or reproducing records, as may be prescribed by order of the court, shall apply to all cases docketed in the supreme court of appeals on the effective date of the order of the court, pending reproduction of the record. Such latter cases, however, shall not be subject to dismissal because of any increased rate, where statement for estimated costs has been rendered and paid as provided in this section, but they shall not be placed upon the argument docket until the increased cost thereof shall have been paid in full.

CHAPTER 63
(Com. Sub. for S. B. 327—By Senators Warner and Felton)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to providing for the misdemeanor offense of impersonating a law-enforcement officer or official; definitions; and criminal penalty.

Be it enacted by the Legislature of West Virginia:

That article one, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nine, to read as follows:
ARTICLE 1. CRIMES AGAINST THE GOVERNMENT.

§61-1-9. Impersonation of law-enforcement officer or official; penalty.

Any person who shall falsely represent himself or herself to be a law-enforcement officer or law-enforcement official or to be under the order or direction of any such person, or any person not a law-enforcement officer or law-enforcement official who shall wear the uniform prescribed for such persons, or the badge or other insignia adopted for use by such persons with the intent to deceive another person, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars.

For purposes of this section, the terms law-enforcement officer and law-enforcement official shall be defined by section one, article twenty-nine, chapter thirty of this code, except that such terms shall not include members of the division of public safety and shall not include individuals hired by nonpublic entities for the provision of security services.

CHAPTER 64
(H. B. 4749—By Delegates Basham and Reid)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to purchase of metals by junk dealers, salvage yard or recycling facility owners or operators; maintaining records thereof; requiring proof of ownership; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section forty-nine, 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.

§61-3-49. Purchase of metals by junk dealers, salvage yard or recycling facilities owners or operators; records of such purchases; penalties.

(a) Any person in the business of purchasing scrap metal, such as a junk dealer, a salvage yard owner or operator or a public or commercial recycling facility owner or operator, or any agent or employee thereof, who purchases any form of copper, or aluminum wire, brass bearings or fittings, mercury, lead or other metallic material of any kind, shall make a permanent record of such purchase. Such record shall accurately list the name, permanent and business addresses and telephone number of the seller, the motor vehicle license number of any vehicle used to transport the metals to the place of purchase, the time and date of the transaction and a complete description of the kind and character of the materials purchased. The person purchasing the scrap metal shall also require from the seller, and retain in the permanent record, affidavit of ownership of the materials being sold. It shall be unlawful for any of the aforementioned persons to purchase any metallic materials without affidavit of ownership, or authorization from the owner to sell, on the part of the seller. Such record shall be available for inspection by any law-enforcement officer and must be maintained for not less than one year after the date of the purchase. On or before the first day of January, April, July and October of each year, a purchaser of scrap metal shall forward to the division of public safety a copy of all records of purchases made in the preceding three months.

(b) Should the transaction involve one hundred or more pounds of copper or aluminum, in any form, the purchaser of the scrap metal, or his or her agent, shall report in writing to the chief of police of the municipality or the sheriff of the county wherein he or she is transacting business and to the local detachment of the division of public safety all the information obtained. The report must be filed within twenty-four hours after the transaction. The purchaser may not alter the form
or substance of, dispose of or remove from this state, such copper or aluminum for a period of ten days after the purchase.

(c) Every nonresident, before transporting from the state any of the items hereinbefore mentioned, shall file with the sheriff of the county where such purchase was made a complete description of the property he or she proposes to transport from the state, showing the date of purchase, the names of the buyer and seller, the party to whom consigned, and the license number of any automobile or truck which may be employed in transporting such junk or materials hereinbefore mentioned.

(d) Nothing in this section applies to scrap purchases by manufacturing facilities that melt, or otherwise alter the form of scrap metal and transform it into a new product or to the purchase or transportation of food and beverage containers or other nonindustrial metallic materials having a marginal value per individual unit.

(e) Any person violating the provisions of this section, including the knowing falsification of any required information, is guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred nor more than five hundred dollars or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

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CHAPTER 65

(Com. Sub. for S. B. 184—By Senators Wehrle, Humphreys and M. Manchin)

[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight-e, relating to the display of video ratings or the lack thereof; setting forth the legislative purpose; defining certain terms; prohibiting business entities from selling, offering for sale, renting or offering to rent, video movies without certain designations dis-
played upon the cassettes or jackets thereof; creating a misdemeanor crime; and establishing penalties therefor.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eight-e, to read as follows:

ARTICLE 8E. DISPLAY OF VIDEO RATINGS OR LACK THEREOF.

§61-8E-1. Legislative purpose.
§61-8E-3. Labeling of video movies designated for sale or rental: penalties.

§61-8E-1. Legislative purpose.

1 The Legislature finds that the motion picture industry has had an effective voluntary film rating system for many years. It further finds that with the advent of movie video cassette sales and rentals that the variety and number of movie video cassettes available to the consumer for home use has significantly increased. This growth in the marketplace has resulted in some film makers and distributors choosing not to be subject to the voluntary rating system, putting the consumer in the position of being without the guidance of such rating system in making rental or purchase decisions. The Legislature believes that the public has a right to be informed about movie video cassette ratings or the lack thereof in making rental or purchase decisions.


1 In this article, unless a different meaning is plainly required:

3 (1) "Business entity" means any sole proprietorship, partnership or corporation;

5 (2) "Official rating" means an official rating of the Motion Picture Association of America and the Film Advisory Board, Inc.; and

8 (3) "Video movie" means a video tape or video disc copy of a motion picture film.
§61-8E-3. Labeling of video movies designated for sale or rental; penalties.

1 (a) No business entity in this state shall sell, offer for sale, rent or offer for rent, any video movie which does not have visibly and legibly displayed on the cassette case or jacket, an official rating or, if the motion picture film has obtained no such rating, the designation “NOT RATED” or “N.R.”.

7 (b) Any business entity which knowingly violates the provisions of subsection (a) of this section shall be guilty of a misdemeanor and for a first offense conviction shall be fined not more than twenty-five dollars. A conviction for a second or subsequent offense shall subject the offender to a fine not to exceed one hundred dollars.

CHAPTER 66
(S. B. 147—By Senator Tomblin)

[Passed February 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transferring the administration of the crime victims compensation fund from the department of public safety to the court of claims.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

1 (a) The following agencies and boards, including all

* Clerk's Note: §5F-2-1 was also amended by S. B. 615 (Chapter 187), which passed subsequent to this act.
funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of administration:

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

(2) Records management and preservation advisory committee provided for in article eight, chapter five of this code;

(3) Public employees retirement system and board of trustees provided for in article ten, chapter five of this code;

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

(5) Department of finance and administration and council of finance and administration provided for in article one, chapter five-a of this code;

(6) Employee suggestion award board provided for in article one-a, chapter five-a of this code;

(7) Governor’s mansion advisory committee provided for in article four-a, chapter five-a of this code;

(8) Advisory commission to the information system services division in the department of finance and administration provided for in article seven, chapter five-a of this code;

(9) Teachers retirement system and teachers' retirement board provided for in article seven-a, chapter eighteen of this code;

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

(11) Department of personnel of the civil service system and the civil service commission provided for in article six, chapter twenty-nine of this code;
(12) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen and article six-a, chapter twenty-nine of this code;

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

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

(15) Public legal services council provided for in article twenty-one, chapter twenty-nine of this code;

(16) Division of personnel which may be hereafter created by the Legislature; and

(17) The West Virginia ethics commission which may be hereafter created by the Legislature.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of commerce, labor and environmental resources:

(1) Forest management review commission provided for in article twenty-four, chapter five of this code;

(2) Department of commerce provided for in article one, chapter five-b of this code;

(3) Office of community and industrial development provided for in article two, chapter five-b of this code;

(4) Enterprise zone authority provided for in article two-b, chapter five-b of this code;

(5) Office of federal procurement assistance provided for in article two-c, chapter five-b of this code;

(6) Export development authority provided for in article three, chapter five-b of this code;

(7) Labor-management council provided for in article four, chapter five-b of this code;
(8) Industry and jobs development corporation provided for in article one, chapter five-c of this code;

(9) Public energy authority and board provided for in chapter five-d of this code;

(10) Air pollution control commission provided for in article twenty, chapter sixteen of this code;

(11) Resource recovery—solid waste disposal authority provided for in article twenty-six, chapter sixteen of this code;

(12) Division of forestry and forestry commission provided for in article one-a, chapter nineteen of this code;

(13) Department of natural resources and natural resources commission provided for in article one, chapter twenty of this code;

(14) Water resources board provided for in article five, chapter twenty of this code;

(15) Water development authority and board provided for in article five-c, chapter twenty of this code;

(16) Department of labor provided for in article one, chapter twenty-one of this code;

(17) Labor-management relations board provided for in article one-b, chapter twenty-one of this code;

(18) Public employees occupational safety and health advisory board provided for in article three-a, chapter twenty-one of this code;

(19) Minimum wage rate board provided for in article five-a, chapter twenty-one of this code;

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

(21) Department of energy provided for in article one, chapter twenty-two of this code;
(22) Reclamation board of review provided for in article four, chapter twenty-two of this code;

(23) Board of appeals provided for in article five, chapter twenty-two of this code;

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

(25) Shallow gas well review board provided for in article seven, chapter twenty-two of this code;

(26) Oil and gas conservation commission provided for in article eight, chapter twenty-two of this code;

(27) Board of miner training, education and certification provided for in article nine, chapter twenty-two of this code;

(28) Mine inspectors' examining board provided for in article eleven, chapter twenty-two of this code;

(29) Oil and gas inspectors' examining board provided for in article thirteen, chapter twenty-two of this code;

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

(31) Blennerhassett historical park commission provided for in article eight, chapter twenty-nine of this code;

(32) Tourist train and transportation board provided for in article twenty-four, chapter twenty-nine of this code;

(33) Economic development authority provided for in article fifteen, chapter thirty-one of this code;

(34) Board of members of the forest industries industrial foundation provided for in article sixteen, chapter thirty-one of this code;

(35) Department of banking provided for in article two, chapter thirty-one-a of this code;
(36) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(37) Consumer affairs advisory council provided for in article seven, chapter forty-six-a of this code; and

(38) Lending and credit rate board provided for in chapter forty-seven-a of this code.

(c) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of education and the arts:

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

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

(3) Board of regents provided for in article twenty-six, chapter eighteen of this code; and

(4) Department of culture and history, archives and history commission and commission on the arts provided for in article one, chapter twenty-nine of this code.

(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of health and human resources:

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

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

(3) Department of veterans' affairs and veterans' council provided for in article one, chapter nine-a of this code;
(4) Department of health and board of health provided for in article one, chapter sixteen of this code;

(5) Health care planning council provided for in article two-d, chapter sixteen of this code;

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

(7) Continuum of care board for the elderly, disabled and terminally ill provided for in article five-d, chapter sixteen of this code;

(8) Hospital finance authority provided for in article twenty-nine-a, chapter sixteen of this code;

(9) Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;

(10) Structural barriers compliance board provided for in article ten-f, chapter eighteen of this code;

(11) Department of employment security, state advisory council thereto and board of review provided for in chapter twenty-one-a of this code;

(12) Office of workers’ compensation commissioner, advisory board thereto and workers’ compensation appeal board provided for in chapter twenty-three of this code;

(13) Commission on aging provided for in article fourteen, chapter twenty-nine of this code;

(14) Commission on mental retardation and advisory committee thereto provided for in article fifteen, chapter twenty-nine of this code;

(15) Women’s commission provided for in article twenty, chapter twenty-nine of this code; and

(16) Commission on children and youth provided for in article six-c, chapter forty-nine of this code.

(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and
funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of public safety:

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

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

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

(4) Department of public safety and commission on drunk driving prevention provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and emergency services advisory council provided for in article five, chapter fifteen of this code;

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

(7) Department of corrections provided for in chapter twenty-five of this code;

(8) Fire commission and state fire administrator provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and prison authority provided for in article twenty, chapter thirty-one of this code; and

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

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of tax and revenue:

(1) Tax department provided for in article one, chapter eleven of this code;
(2) Appraisal control and review commission provided for in article one-a, chapter eleven of this code;

(3) Office of nonintoxicating beer commissioner provided for in article sixteen, chapter eleven of this code;

(4) Board of investments provided for in article six, chapter twelve of this code;

(5) Municipal bond commission provided for in article three, chapter thirteen of this code;

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

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

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

(9) Office of alcohol beverage control commissioner provided for in article two, chapter sixty of this code; and

(10) Division of professional and occupational licenses which may be hereafter created by the Legislature.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of transportation:

(1) Road commission provided for in article two, chapter seventeen of this code;

(2) Department of highways provided for in article two-a, chapter seventeen of this code;

(3) Turnpike commission provided for in article sixteen-a, chapter seventeen of this code;
(4) Department of motor vehicles provided for in article two, chapter seventeen-a of this code;

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

(6) Motorcycle safety standards and specifications board provided for in article fifteen, chapter seventeen-c of this code;

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

(8) Railroad maintenance authority provided for in article eighteen, chapter twenty-nine of this code; and

(9) Port authority which may be hereafter created by the Legislature.

(h) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency shall not be affected by the enactment of this chapter.

(i) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards shall not be affected by the enactment of this chapter, and all boards which are appellate bodies or were otherwise established to be independent decision-makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(j) Wherever elsewhere in this code, in any act, in general or other law, in any rule or regulation, or in any ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read,
Ch. 67] CRIME VICTIMS 591

311 construed and understood to mean a division of the
312 appropriate department so created, and any such
313 reference elsewhere to a division of a department so
314 transferred and incorporated shall henceforth be read,
315 construed and understood to mean a section of the
316 appropriate division of the department so created.

317 (k) The crime victims compensation fund provided for
318 in article two-a, chapter fourteen of this code, including
319 all of the allied, advisory, affiliated or related entities
320 and funds associated therewith, is hereby transferred to
321 and incorporated in and shall be administered as a part
322 of the court of claims.

CHAPTER 67

(H. B. 4256—By Delegates Rowe and Pitrolo)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, fourteen and
twenty-six, article two-a, chapter fourteen of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, relating to imposing costs on persons con­
victed of driving under the influence, such costs being
deposited in the crime victims fund, and to the award
of compensation from the crime victims compensation
fund to the spouse of, person living in the same
household with, parent, child, brother or sister of the
offender or his accomplice.

Be it enacted by the Legislature of West Virginia:

That sections four, fourteen and twenty-six, article two-a,
chapter fourteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, be amended to read as
follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF
CRIMES.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum
awards; awards for emotional distress; mental anguish, etc.

(a) Every person within the state who is convicted of or pleads guilty to a misdemeanor or felony offense, other than a traffic offense that is not a moving violation, shall pay the sum of three dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon such convicted person. In addition to the three dollar sums required to be collected as costs under the provisions of this subsection, there shall be collected from every person so convicted in any magistrate court and circuit court (and excluding municipal courts) the sum of one dollar which shall be in addition to any other court cost required by this section or which may be required by law. In addition to any other costs previously specified, every person within the state who is convicted of or pleads guilty to a violation of section two, article five, chapter seventeen-c, shall pay the following cost:

(1) For a first offense, ten dollars;
(2) For a second offense, twenty-five dollars;
(3) For a third or subsequent offense, fifty dollars.

This shall be in addition to any other court cost required by this section or which may be required by law.

(b) The clerk of the circuit court, magistrate court or municipal court wherein such additional costs are imposed under the provisions of subsection (a) of this section shall, on or before the last day of each month, transmit all such costs received under this article to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the "Crime Victims Compensation Fund," which is hereby created. All moneys heretofore collected and received under the prior enactment or reenactments of this article and deposited or to be deposited in the "Crime Victims Reparation Fund" are hereby transferred to the crime victims compensation fund, and the treasurer shall so deposit such moneys in the state treasury. All
moneys collected and received under this article and
paid into the state treasury and credited to the crime
victims compensation fund in the manner prescribed in
section two, article two, chapter twelve of this code, shall
be kept and maintained for the specific purposes of this
article, and shall not be treated by the auditor and
treasurer as part of the general revenue of the state.

(c) Moneys in the crime victims compensation fund
shall be available for the payment of the costs of
administration of this article in accordance with the
budget of the court approved therefor: Provided, That
the services of the office of the attorney general, as may
be required or authorized by any of the provisions of this
article, shall be rendered without charge to the fund.

*§14-2A-14. Grounds for denial of claim or reduction of
awards; maximum awards; awards for
emotional distress; mental anguish, etc.

(a) Except as provided in subsection (b), section ten
of this article, the judge or commissioner shall not
approve an award of compensation to a claimant who
did not file his application for an award of compensation
within two years after the date of the occurrence of the
criminally injurious conduct that caused the injury or
death for which he is seeking an award of compensation.

(b) An award of compensation shall not be approved
if the criminally injurious conduct upon which the claim
is based was not reported to a law-enforcement officer
or agency within seventy-two hours after the occurrence
of the conduct, unless it is determined that good cause
existed for the failure to report the conduct within the
seventy-two hour period.

(c) The judge or commissioner shall not approve an
award of compensation to a claimant who is the offender
or an accomplice of the offender who committed the
criminally injurious conduct, nor to any claimant if the
award would unjustly benefit the offender or his accomplice.

*Clerk's Note: §14-2A-14 was also amended by H. B. 4559 (Chapter 53),
which passed prior to this act.
(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies, or the claim investigator, may deny a claim, reduce an award of compensation, and may reconsider a claim already approved.

(e) An award of compensation shall not be approved if the injury occurred while the victim was confined in any state, county or city jail, prison, private prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing such approval, the judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the clerk of the court of claims. The judge or commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if such reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source:

Provided, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g) Except in the case of death, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim shall not exceed thirty-five thousand dollars in the aggregate. Compensation payable to a victim of criminally injur-
ious conduct which causes permanent injury may include, in addition to economic loss, an amount up to fifteen thousand dollars for emotional distress and pain and suffering which are proximately caused by such conduct. Compensation payable to all claimants because of the death of the victim shall not exceed fifty thousand dollars in the aggregate, but may include, in addition to economic loss, compensation to the claimants specified in paragraph (2), subdivision (a), section three of this article, for sorrow, mental anguish and solace.


(a) The court of claims may promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article.

(b) The court of claims shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to govern the award of compensation to the spouse of, person living in the same household with, parent, child, brother or sister of the offender or his accomplice in order to avoid an unjust benefit to or the unjust enrichment of the offender or his accomplice.

CHAPTER 68
(Com. Sub. for H. B. 2727—By Delegate Damron)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-b, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to counties; civil service for deputy sheriffs; increasing the maximum days of sick leave for deputy sheriffs; and allowing unlimited unpaid sick leave.

Be it enacted by the Legislature of West Virginia:

That section seventeen-b, article fourteen, 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 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17b. Sick leave for deputy sheriffs.

(a) The county commission of each county shall allow the sheriff's deputies sick leave with pay to be computed as follows: Full-time deputies shall be entitled to one and one-half days sick leave for each calendar month worked, or greater part thereof; part-time deputies shall be entitled to sick leave at the same rate and in the same proportion that hours actually worked bears to hours regularly scheduled for full-time deputies: Provided, That deputies may accumulate not more than one hundred twenty sick leave days.

(b) Sick leave may be granted only when illness on the part of or injury to the deputy incapacitates him for duty: Provided, That the sheriff of the county in which the deputy is employed shall have the authority to require the deputy to produce a statement from an attending physician for each day of sick leave beyond two days. This statement shall include dates of treatment and also state that the deputy was unable to work. In the absence of the physician's statement, if required, annual leave shall be charged for the entire period.

(c) In the event of illness, a full-time deputy may take without limit emergency sick leave without pay after all accrued sick leave, annual leave and compensatory time available to such full-time deputy has been exhausted.

CHAPTER 69
(S. B. 18—By Senator Holliday)

[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

AN ACT to repeal section sixteen, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to marriages between colored persons.

Be it enacted by the Legislature of West Virginia:
ARTICLE 1. MARRIAGE.

§1. Repeal of section relating to marriages between colored persons.

Section sixteen, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 70

(Com. Sub. for H. B. 4109—By Delegates Murphy and Given)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine and ten, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prevention of domestic violence; purposes; definitions; jurisdiction; priority of petitions; commencement of proceedings; temporary orders of courts; hearings; protective orders; testimony of husband and wife; record keeping and reporting requirements; contempt; purposes; penalty for contempt; and enforcement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-1. Purpose.
§48-2A-3. Jurisdiction; effect of complaining party leaving residence; priority of petitions filed under this article.
§48-2A-5. Temporary orders of court; hearings.
§48-2A-8. Testimony of husband and wife.
§48-2A-10. Enforcement procedure for temporary and protective order.
§48-2A-1. Purpose.

1 The purpose of this article is to prevent continuing abuse of one family or household member at the hands of another family or household member. Nothing contained in this article shall be construed as affecting the abused party's rights of action or claims which are otherwise provided for in this code or by common law.

An abusing party will remain subject to a damage claim or charges of criminal conduct. It is the intent of the Legislature to provide temporary and immediate relief for an abused party so that he or she may make rational decisions regarding their future, thus enabling them to initiate procedures for appropriate permanent remedies.

It is further intended that magistrates fully explain to persons alleging spousal abuse the procedures involved pursuant to a domestic violence petition. Magistrates shall also inform such persons alleging abuse to the existence of the nearest residential or other protective facility. It is further intended that no proceeding under this article shall be initiated during the pendency of a divorce action between the person seeking relief under the provisions of this article and the alleged defendant.

Any order entered by virtue of this article, unless it has expired by virtue of the provisions herein regarding periods of time the order remains in effect, shall remain in full force and effect upon the filing by either party of a complaint for divorce, annulment or separate maintenance until such time as the family law master or circuit judge, having jurisdiction over said action, enters an order superseding such protective order.


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

3 (a) "Abuse" means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together;

6 (1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury with or without dangerous or deadly weapons;
(2) Placing by physical menace another in fear of imminent serious bodily injury;
(3) Creating fear of bodily injury by harassment, psychological abuse or threatening acts;
(4) Sexual abuse.

(b) “Family or household member” means spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, or other persons related by consanguinity or affinity.

c) “Sexual abuse” has the same meaning as the definitions of “sexual assault” and “sexual abuse” in this code.

§48-2A-3. Jurisdiction; effect of complaining party leaving residence; priority of petitions filed under this article.

Circuit courts and magistrate courts, as constituted under chapter fifty of this code, shall have concurrent jurisdiction over proceedings under this article. The complaining party’s right to relief under this article shall not be affected by his or her leaving the residence or household to avoid further abuse. 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.


(a) A person may seek relief under this article for himself or herself, or any parent or adult household member may seek relief under this article on behalf of a minor child, by filing a verified petition alleging abuse by the respondent. No person shall be refused the right to file a petition under the provisions of this article if he or she presents facts sufficient under the provisions of this article for the relief sought.

(b) The West Virginia supreme court of appeals shall prescribe a form which shall be used for preparing a petition under this article, and the court shall distribute such forms to the clerk of the circuit court of each county within the state.
(c) The respondent named in any petition alleging abuse may file a counterclaim or raise any affirmative defenses.

(d) No person accompanying a person who is seeking to file a petition under the provisions of this article shall be precluded from being present if his or her presence is desired by the person seeking a petition unless the person's behavior is disruptive to the proceeding or is otherwise in violation of court rules.

§48-2A-5. Temporary orders of court; hearings.

(a) Upon filing of a verified petition under this article, the court may enter such temporary orders as it may deem necessary to protect the complainant or minor children from abuse, and, upon good cause shown, may do so ex parte without the necessity of bond being given by the plaintiff. Clear and convincing evidence of immediate and present danger of abuse to the complainant or minor children shall constitute good cause for purposes of this section. If the defendant is not present at the proceeding, complainant or complainant's legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the defendant or just cause why notice should not be required. Following such proceeding, the court shall order a copy of the petition to be served immediately upon the defendant, together with a copy of any protective order issued pursuant to the proceeding, notice setting forth the time and place of the full hearing and a statement of the right of the defendant to be present and to be represented by counsel. Such initial protective order shall remain effective until such time as a hearing is held.

(b) Within five days following the issuance of the court's temporary order, a full hearing shall be held at which the complainant must prove the allegation of abuse by a preponderance of the evidence, or such petition shall be dismissed. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of such records. At the hearing, the
court may make any protective order or approve any consent agreement authorized by this article.

(c) No person requested by a party to be present during a hearing held under the provisions of this article shall be precluded from being present unless such person is to be a witness in the proceeding and a motion for sequestration has been made and such has been granted or is found by the court to be disruptive or otherwise in violation of court rules.

(d) If a hearing is continued, the court may make or extend such temporary orders as it deems necessary.


(a) The court may grant any protective order it deems necessary to bring about a cessation of abuse of the complainant or minor children, which may include:

(1) Directing the defendant to refrain from abusing the complainant or minor children;

(2) Granting possession to the complainant of the residence or household to the exclusion of the defendant when the residence or household is jointly owned or leased by the parties;

(3) When the defendant has a duty to support the complainant or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the complainant of the residence or household to the exclusion of the defendant or by consent agreement allowing the defendant to provide suitable alternate housing;

(4) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children;

(5) Ordering the defendant to pay to the complainant a sum for temporary support and maintenance of the abused party. This order is of a temporary nature and, on the sixtieth day following issuance of the order, that portion of the order requiring the defendant to pay support, becomes void unless the beneficiary of that order has filed a petition for divorce with a prayer for
temporary support and maintenance under section seventeen, article two, chapter forty-eight of this code or has initiated an action for separate maintenance under section twenty-eight, article two, chapter forty-eight of this code. When there is a subsequent ruling on a petition for support under section thirteen, article two, chapter forty-eight of this code, that portion of the order requiring the defendant to pay support becomes void;

(6) Ordering the defendant to refrain from entering the school, business or place of employment of the complainant or household members or family members for the purpose of violating the protective order;

(7) Directing the parties or a party to participate in counseling;

(8) Ordering the defendant to refrain from contacting, telephoning, communicating, harassing or verbally abusing the complainant in any public place.

(b) Any protective order shall be for a fixed period of time not to exceed sixty days. The court may amend its order at any time upon subsequent petition filed by either party.

(c) No order under this article shall in any manner affect title to any real property.

(d) Certified copies of any order made under the provisions of this article shall be issued to the plaintiff, the defendant and any law-enforcement agency having jurisdiction to enforce the order or agreement, including the city police, the county sheriff's office or local office of the state police.


(a) Upon violation of any order issued pursuant to this article, the court shall, upon the filing of appropriate pleadings by or on behalf of any aggrieved party, issue an order to show cause why the person violating any provisions of the court's order should not be held in contempt of court and set a time for a hearing thereon within five days of the filing of said motion.

(b) Notwithstanding any other provision of law to the
contrary, any sentence for contempt hereunder may include imprisonment up to thirty days and a fine not to exceed one thousand dollars or both. In lieu of confinement, the court may allow the contemnor to post bond as surety for the faithful compliance with the orders of the court.

§48-2A-8. Testimony of husband and wife.

Husband and wife are competent witnesses in such proceedings and cannot refuse to testify on the grounds of the privileged nature of their communications.


(a) Each law-enforcement agency shall maintain records on all incidents of family or household abuse reported to it, and shall monthly make and deliver to the department of public safety a report on a form prescribed by the department, listing all such incidents of family or household abuse. Such reports shall include:

(1) The age and sex of the abused and abusing parties;
(2) The relationship between the parties;
(3) The type and extent of abuse;
(4) The number and type of weapons involved;
(5) Whether the law-enforcement agency responded to the complaint and if so, the time involved, the action taken and the time lapse between the agency’s action and the abused’s request for assistance;
(6) Whether the complaining party reported having filed complaints with regard to family or household abuse on any prior occasion and if so, the number of such prior complaints; and
(7) The effective dates and terms of any order of protection issued prior to or following the incident to protect the abused party: Provided, That no information which will permit the identification of the parties involved in any incident of abuse shall be included in such report.

(b) The department of public safety shall tabulate and
analyze any statistical data derived from the reports made by law-enforcement agencies pursuant to this section, and publish a statistical compilation in the department's annual uniform crime report, as provided for in section twenty-four, article two, chapter fifteen of this code.

(c) The statistical compilation shall include, but is not limited to, the following:

(1) The number of family violence complaints received;

(2) The number of complaints investigated;

(3) The number of complaints received from alleged victims of each sex;

(4) The average time lapse in responding to such complaints;

(5) The number of complaints received from alleged victims who have filed such complaints on prior occasions;

(6) The number of aggravated assaults and homicides resulting from such repeat incidents;

(7) The type of police action taken in disposition of the cases; and

(8) The number of alleged violations of orders of protection.

(d) As used in this section, the terms "abuse" and "family or household members" shall have the meanings given them in section two, article two-a, chapter forty-eight of this code; and the term "law-enforcement agency" shall include the West Virginia department of health and human resources in those instances of child abuse reported to the department which are not otherwise reported to any other law-enforcement agency.

(e) The department of public safety shall develop and implement policies and procedures to guide law-enforcement officers in responding to and investigating domestic violence episodes, making arrests for domestic
violence episodes and in accordance with this section. Such policies and procedures are to be in effect by the first day of July, one thousand nine hundred ninety. Copies of said policies and procedures are to be distributed to all law-enforcement departments in this state.

(f) Nothing in this section shall be construed to authorize the inclusion of information contained in a report of an incident of abuse in any local, state, interstate, national or international systems of criminal identification pursuant to section twenty-four, article two, chapter fifteen of this code: Provided, That nothing in this section shall prohibit the department of public safety from processing information through its criminal identification bureau with respect to any actual charge or conviction of a crime.

§48-2A-10. Enforcement procedure for temporary and protective order.

(a) Upon issuance of a temporary order as provided in section five of this article, and service thereof upon the defendant, or under relief granted in a protective order as provided in subsections (a) and (b), section six of this article of which the defendant has notice, a copy of such order shall, no later than the close of the next business day, be delivered to a local office of the city police, the county sheriff, and the West Virginia department of public safety, where it shall be placed in a confidential file, with access provided only to the law-enforcement agency and the respondent named on said order: Provided, That upon the expiration of any order issued pursuant to section five or six of this article, any such law-enforcement agency which has any such order on file, shall immediately expunge its confidential file of any reference thereto and destroy all copies of such order in its possession, custody or control. A sworn affidavit may be executed by the party awarded exclusive possession of the residence or household, pursuant to an order entered under subsection (b) of section six of this article, and delivered to such law-enforcement agency simultaneously with any such order, giving his consent for a law-enforcement officer
to enter such residence or household, without a warrant, to enforce such protective order or temporary order.

(b) Any person who observes a violation of such order or the violated party may call a local law-enforcement agency, which shall verify the existence of a current order, and shall direct a law-enforcement officer to immediately investigate the alleged violation.

(c) Where a law-enforcement officer observes a violation of a valid order, he may immediately arrest the subject of the order. In cases of violation of such orders occurring outside the presence of the investigating officer, the complainant may apply to a court in session for a warrant of arrest. If the court finds probable cause to believe that a valid order has been violated, the court shall issue such warrant for the arrest of the subject of the order wherever he may be found.

(d) Where there is an arrest, the officer shall take the arrested person before a court or the magistrate assigned to be available at such time and upon a finding of probable cause to believe a violation of an order has taken place, the court or magistrate shall set a time and place for a hearing, to take place within five days, and serve forthwith upon the alleged violator an order to show cause why he or she should not be held in contempt for violation of the prior order, which unless waived by the defendant shall be by trial by a jury of six persons. The remedies provided by this section shall be limited to violations of a temporary order or protective order entered pursuant to subsection (a) or (b), section six of this article.

CHAPTER 71
(Com. Sub. for H. B. 4799—By Delegate Phillips)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to repeal article three, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section five, article two of said
chapter five-b; to amend and reenact sections one, two, four, five, six, six-a, seven, eight, ten, twelve, twelve-b, thirteen, fifteen, sixteen, seventeen and eighteen, article one, chapter five-b; to amend and reenact section three, article two, chapter five-b; to further amend said article by adding thereto a new section, designated section two-a; and to amend said chapter five-b by adding thereto a new article, designated article two-d, all relating to creating the division of tourism and parks; short title; legislative findings; sections created; appointment; compensation and qualifications of commissioner; general powers of the division; sections created; continuation of civil service coverage for persons employed in the former department of commerce; program and policy action statement; submission to joint committee on government and finance; section of tourism; purpose; powers and duties generally; section of advertising and promotion; purpose; powers and duties generally; section of product marketing; purpose; powers and duties generally; section of parks and recreation created; duties; records and equipment previously transferred from the department of natural resources to the department of commerce; funds; conveyance of Grandview State Park to the national park service; governor; director of the division of natural resources and director of the division of tourism and parks; section of parks and recreation; incorporating Moncove Lake public hunting and fishing area as a state park to be named Moncove Lake State Park; contracts for operation of commissaries; renewal option; purchase of investment and price determination; master plan development; public hearing on proposed contracts; promulgation of rules; purpose; powers and duties generally; acquisition of former railroad subdivision for establishment of Greenbrier River Trail; development; protection; operation and maintenance of trail; correlation of projects and services; sunset provision; governor's office of community and industrial development; general powers of the office; divisions created; creation of the West Virginia guaranteed work force program; short title; definitions; development of business and industrial training program; funding of program; program
activities; reports to Legislature and governor and joint commission on vocational, technical, and occupational education; and marketing of program.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Division of Tourism and Parks.
2. Office of Community and Industrial Development.
2D. West Virginia Guaranteed Work Force Program.

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-1. Short title.
§5B-1-2. Legislative findings.
§5B-1-3. Division created; appointment, compensation and qualifications of commissioner.
§5B-1-4. General powers of the division.
§5B-1-5. Sections created; continuation of civil service coverage for persons employed in the former department of commerce.
§5B-1-6a. Program and policy action statement; submission to joint committee on government and finance.
§5B-1-6. Section of tourism; purpose; powers and duties generally.
§5B-1-7. Section of advertising and promotion; purpose; powers and duties generally.
§5B-1-8. Section of sales and marketing; purpose; powers and duties generally.
§5B-1-9. Section of parks and recreation created; duties, records and equipment previously transferred from the department of natural resources to the department of commerce; funds.
§5B-1-10b. Conveyance of Grandview State Park to the National Park Service; governor, director of the division of natural resources and director of the division of tourism and parks.
§5B-1-11. Section of parks and recreation; purpose; powers and duties generally.
§5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years’ duration: renewal at option of commissioner; termination of contract by the commissioner; contracts for development of revenue producing facilities within the state parks and recreational facilities: level of investment of contracts: term of investment contract: reservation of option to renew: and purchase of investment in event of default and price determination upon such event.

§5B-1-16. Acquisition of former railroad subdivision for establishment of Greenbrier River Trail: development, protection, operation and maintenance of trail.

§5B-1-17. Correlation of projects and services.

§5B-1-18. Sunset provision.

§5B-1-1. Short title.

1 This chapter shall be known and may be cited as “The Economic Development Act of 1990.”

§5B-1-2. Legislative findings.

1 It is hereby determined and declared as a matter of legislative finding:

2 (a) That seriously high unemployment exists in many areas of the state;

3 (b) That economic insecurity due to unemployment undermines the health, safety and general welfare of the people of the entire state;

4 (c) That the absence of employment and business opportunities for youth is a serious threat and has resulted in families leaving the state to find opportunities elsewhere, adversely affecting the tax base of the state, counties and municipalities;

5 (d) That the present and future welfare of the people of the state require as a public purpose a renewed effort toward the promotion and development of business enterprises with potential to help;

6 (e) That the legislative and executive branches of state government must seek out and recruit exceptionally qualified individuals and organizations to administer, advise and manage the state’s economic development programs;

7 (f) That the state’s leaders of business, labor, education and government must cooperate and advance
together on common ground, with the common purpose
of the economic revitalization of our state; and

(g) That the industrial products and natural resources
of the state need to be more thoroughly managed,
developed and promoted and the various industries
better coordinated and developed to provide a healthy
industry environment that will decrease unemployment,
promote the use of, while also protecting the renewable
natural resources of West Virginia, and otherwise
provide for the economic revitalization of our state.

In recognition of these findings, it is in the best
interest of the citizens of this state to transfer the
management and responsibility of the division of parks
and recreation to the division of tourism and parks.

§5B-1-4. Division created; appointment, compensation
and qualifications of commissioner.

Effective the first day of July, one thousand nine
hundred ninety, there is hereby created in the executive
branch of state government a division of tourism and
parks and the office of commissioner of tourism and
parks. The commissioner shall be the chief executive
officer of the division with control and supervision of its
operations and shall be appointed by the governor with
the advice and consent of the Senate and shall be paid
a salary of sixty-five thousand dollars a year. The
commissioner shall have control and supervision of the
division and shall be responsible for the work of each
of its sections. Under the control and supervision of the
commissioner, each section director shall be responsible
for the work of his section. The commissioner shall have
the authority to employ such assistants as may be
necessary for the efficient operation of the division.

The commissioner may appoint such deputy commis-
sioners and assign them such duties as may be necessary
for the efficient management and operation of the
division.

§5B-1-5. General powers of the division.

The division of tourism and parks shall have the
authority and duty to:
(1) Promote, encourage and facilitate the expansion and development of markets for West Virginia products and services and the state's national and international image and prestige by any and all reasonable methods;

(2) Compile periodically a census of the crafts, trades, skills and occupations of all adult persons in the state, in cooperation with other agencies, and analyze and publish the information in such form as to be most valuable to business and industry;

(3) Advertise and publicize the material, economic quality of life, recreational and other advantages of the state which render it a desirable place for commerce and residence;

(4) Collect, compile and distribute information and literature concerning the advantages and attractions of the state, its historic and scenic points of interest and the highway, transportation and other facilities of the state;

(5) Plan and carry out a program of information and publicity designed to attract to West Virginia tourists, visitors and other interested persons from outside the state;

(6) Manage the state's park and recreation system for the benefit of the people of this state, and effectively promote and advertise the same to increase public knowledge and use thereof;

(7) To acquire for the state in the name of the division of tourism and parks by purchase, lease or agreement, or accept or reject for the state, in the name of the division, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, including lands and water, for state park or recreational areas for the purpose of providing public recreation: Provided, That any sale, exchange or transfer of such property shall be subject to the procedures of article one-a, chapter twenty of this code: Provided, however, That no lands or waters which, on or before December thirty-first, one thousand nine hundred eighty-five, were part
of the state's system of parks, or which were held or used
for recreational purposes, shall be subject to such sale,
exchange or transfer, by the division: Provided further,
That nothing herein contained shall be construed to
prevent the division from selling, transferring or
conveying to any other division or agency of this state
any lands or waters to which it has title and which was
sold, conveyed or transferred to the division from the
division or agency to which it is being sold, conveyed or
transferred;

(8) Make recommendations to the governor and the
Legislature of any legislation deemed necessary to
facilitate the carrying out of any of the foregoing powers
and duties, and to exercise any other power that may
be necessary or proper for the orderly conduct of the
business of the division and the effective discharge of the
duties of the division; and

(9) To cooperate and assist in the production of motion
pictures and television and other communications.

§5B-1-6. Sections created; continuation of civil service
coverage for persons employed in the former
department of commerce.

There is hereby created within the division of tourism
and parks:

(1) The section of tourism;
(2) The section of advertising and promotion;
(3) The section of sales and marketing; and
(4) The section of parks and recreation.

Each said section shall be under the control of a
director to be appointed by the commissioner who shall
be qualified by reason of exceptional training and
experience in the field of activities of his respective
section and shall serve at the will and pleasure of the
commissioner. The commissioner shall have authority to
establish such additional sections as may be determined
necessary to carry out the purposes of this chapter.

All persons employed on the effective date of this
chapter in the department of commerce, the duties and
functions of which have been transferred to the division
of tourism and parks created by virtue of the provisions
of the economic development act of one thousand nine
hundred ninety, are hereby assigned and transferred to
the division of tourism and parks, and no person's
employment shall be eliminated, nor shall any person's
salary, benefits or position classification be reduced or
diminished by reason of the provisions of this chapter.
All persons affected shall retain their coverage under
the civil service system and all matters relating to job
classification, job tenure, salary and conditions of
employment shall remain in force and effect from and
after the effective date of this chapter: Provided, That
nothing herein shall prohibit the disciplining or
dismissal of any employee for cause, or the dismissal of
any nonclassified supervising employees appointed by
the governor and serving at the will and pleasure of the
governor.

§5B-1-6a. Program and policy action statement; submis-
sion to joint committee on government and
finance.

The division of tourism and parks, the office of
community and industrial development and any other
authorities, boards, commissions, corporations or other
entities created or amended under chapters five-b and
article eleven, chapter eighteen-b of this code, shall
prepare and submit to the joint committee on govern-
ment and finance on/or before the first day of De-
cember, one thousand nine hundred ninety, and each
year thereafter, a program and policy action statement
which shall outline in specific detail according to the
purpose, powers and duties of the office or section, its
procedure, plan and program to be used in accomplish-
ing its goals and duties as required under this article.

§5B-1-7. Section of tourism; purpose; powers and duties
generally.

It shall be the duty of the section of tourism:

(a) To promote and enhance the tourist industry and
improve tourist facilities and attractions;
(b) To compile a listing of all tourist facilities in this state, whether public or private, including, but not limited to, state parks and forests, camping grounds, back-packing and hiking trails, public and private hunting areas (including the game or fowl indigenous thereto), fishing lakes, ponds, rivers and streams (including the type of fish indigenous thereto; and the dates of the stocking thereof), ski resorts and areas, ice skating rinks or facilities, rifle and pistol target practice areas, skeet and other shooting facilities, archery ranges, swimming pools, lakes, ponds, rivers and streams, hotels, motels, resorts and lodges (including any attendant restaurant, banquet, meeting or convention facilities or services), health spas or mineral water or spring water health facilities, museums, cultural centers, live performance theaters, colleges, schools, universities, technical centers, airports, railroad stations, bus stations, river docks, boating areas, government or military installations (which are not restricted to public access), historical places, markers or places of events, birthplaces of famous West Virginians, or any other thing of like kind and nature, and to develop relative thereto a series of films, videotapes, pamphlets, brochures and other advertising or promotional media, and to distribute the same in such a manner as to enhance the public's knowledge about West Virginia and its many attractions;

(c) Develop a plan for tourist facility expansion and new development, including financing;

(d) To develop a system, means and mechanism to distribute the promotional media described in subdivision (b) of this section, both nationally and internationally; and to make the same available to travel agents, tour groups, senior citizen organizations, airlines, railroads, bus companies, newspapers, magazines, radio and television stations, and the travel editors thereof; to develop, in cooperation with the division of highways, a series of information stations along interstate and other major highways of this state, utilizing existing rest stop areas and other areas at or near the main points of
(e) To develop and implement a marketing strategy, employing radio, television, magazine and newspaper advertising, or any combination thereof, in those major metropolitan areas of the nation, in order to attract the residents thereof to visit and enjoy the tourist facilities of this state;

(f) To encourage, cooperate with and participate in, any group or organization, including regional travel councils, the purpose of which is to promote and advertise, or encourage the use of, tourist facilities in West Virginia;

(g) To provide professional assistance, technical advice or marketing strategies to any privately owned facility or attraction, as described in subdivision (b) of this section, which is open and available to the general public, which has developed or is attempting to develop its own advertising program;

(h) To employ, train and supervise a corps of information specialists or tour guides in state parks and facilities only who possess, or through their employment and training will possess, specific knowledge and information about the historic, scenic, cultural, industrial, educational, governmental, recreational and geographical significance of the state and the various facilities or attractions described in subdivision (b) of this section. In hiring the information specialists herein provided, special preference shall be given to senior citizens (those over sixty-two years of age) and college students who are bona fide residents of the state and enrolled in any college or university of this state, whether public or private, all of whom shall be hired on a part-time basis and whose periods of employment may be seasonable;

(i) To assist tour groups, travel agencies, public carriers or other entities of like kind or nature in developing a program of preplanned tours, visits or vacations in West Virginia; and, in conjunction therewith, to coordinate the activities of said tour groups, travel agencies, public carriers or other entities with the
services offered by any of the facilities set forth in subdivision (b) of this section; and to encourage said facilities to offer special or discount rates to any party traveling with said tour groups, travel agencies, public carriers or other entities of like kind or nature; and

(j) To cooperate with the division of highways in developing a system of informational highway signing relating to the recreational, scenic, historic and transportational facilities and attractions of the state that comply with the current federal and state regulations as related to outdoor advertising and signing as required by the Manual of Uniform Traffic Control Devices.

§5B-1-8. Section of advertising and promotion; purpose; powers and duties generally.

It shall be the duty of the section of advertising and promotion:

(a) Based upon the information, statistics, facts, studies and conclusions produced by or for the governor's office of community and industrial development, to develop a program of advertising strategies and plans to inform the public at large and specific target groups about various aspects of the state of West Virginia, including, but not limited to, agriculture, natural resources, timber and timber byproducts, coal, oil, gas and their byproducts, existing industries and existing and proposed industrial sites, educational, research and technical institutions, the labor force, transportation, public utilities, navigable waterways, rivers, lakes and streams, taxation, revenue bonding availability and assistance, governmental rules and regulations relative to business and industry, and any other fact, statistic or item of information which is or may be helpful to or of interest to any corporation, partnership, association, individual or individuals who or which is or may be interested in engaging in business in the state of West Virginia;

(b) To develop such films, videotapes, computer software, phonograph records, tape recordings, pamphlets, brochures, booklets, information sheets, radio,
television or newspaper advertising, magazine inserts, advertisements or supplements, billboards or any other thing of like kind or nature which is, or may be, likely to inform the public at large or any specifically targeted group or industry about the benefits of living in, investing in, producing in, buying from, contracting with, or in any other way related to, the state of West Virginia or any business, industry, agency, institution or other entity therein;

(c) To employ or contract with such professional or technical experts or consultants as may be necessary to create and produce the items set forth in subdivision (b) of this section;

(d) To spend such sums of money as may be necessary, within legislative appropriation therefor, to purchase advertising time or space in or upon any medium generally engaged or employed for said purpose to distribute or disseminate the items of advertising described in subdivision (b) of this section;

(e) To provide professional assistance, technical advice or marketing strategies to any privately owned business or industry in this state which has developed or is attempting to develop its own advertising program;

(f) To cooperate with, or participate in, any group or organization, whether public or private, the purpose of which is to promote, enhance or develop a positive image of the state of West Virginia or any business, industry, institution or facility therein;

(g) To use such resources as are available to it to distribute the items of advertising and promotion described in subdivision (b) of this section, to such group or groups, audience or audiences, corporations, partnerships, associations, including public and private colleges and universities, and to individuals, who or which are, or may be, interested in some aspect of the state of West Virginia;

(h) To engage in, participate in, promote or sponsor, such trade shows, fairs, information seminars or symposiums, or other event or events of like kind and
nature, including privately funded trade shows, fairs, information seminars or symposiums, or other event or events of like kind and nature, whether located within or without this state, or beyond the borders of the United States, to promote generally the state of West Virginia or to assist any business, industry or other entity, whether public or private, in promoting, advertising or advancing the reputation of the state of West Virginia or any corporation, association, partnership, institution, business, industry or other entity which is, or may be, likely to produce additional employment or employment opportunities, business or business opportunities in the state of West Virginia; and

(i) To perform such other duties or functions, or to engage in such other activities, as the commissioner may from time to time direct.

§5B-1-10. Section of sales and marketing; purpose; powers and duties generally.

It shall be the duty of the section of sales and marketing:

(a) To develop such programs as are necessary for the promotion and marketing of West Virginia arts, crafts and products, and to implement said program in this state, in the United States and in other countries;

(b) To design, develop and create, or to provide for the design, development and creation of, such films, videotapes, pamphlets, brochures, and other advertising and promotional media, and to distribute the same in such a manner as to enhance the public's knowledge of West Virginia arts, crafts and products;

(c) To sponsor or participate in trade shows, trade fairs or other events the purpose of which is to display, sell, or increase public awareness of, West Virginia arts, crafts and products;

(d) To design and implement a program of direct sales of West Virginia arts, crafts and products; and to provide for the publication and distribution of a catalog which adequately displays and describes the arts, crafts and products being offered for sale, employing such
direct mail or other means of distribution as the director

deems appropriate;

(e) To cooperate with artists, craftsmen, guilds, cooperatives and other organizations, the purposes of which are to enhance or promote West Virginia arts, crafts and products, and to assist said artists, craftsmen, guilds, cooperatives and organizations in the development of their own marketing programs;

(f) To develop markets in West Virginia, other states and other nations for said arts, crafts and products by employing persons who shall act as sales agents for said arts, crafts and products;

(g) To cooperate with other governmental divisions, and with other groups, guilds, cooperatives or other entities, whether public or private, the purpose of which is to further enhance and promote the sale, use, distribution or public knowledge of West Virginia arts, crafts and products; and

(h) To perform such other duties or functions, or to engage in such other activities, as the director may from time to time direct.

§5B-1-12. Section of parks and recreation created; duties, records and equipment previously transferred from the department of natural resources to the department of commerce; funds.

(a) The duties, powers and functions of the section of parks and recreation within the division of natural resources previously transferred to the division of commerce are hereby transferred to the division of tourism and parks.

(b) All books, papers, maps, charts, plans, literature and other records, and all equipment in the possession of the division of commerce shall be delivered or turned over to the division of tourism and parks.

(c) The division of tourism and parks shall have the duty and authority to administer those properties which are a part of the state parks and public recreation
system, but the legal title to such properties shall remain with the division of natural resources.

(d) All existing contracts and obligations of the division of parks and recreation shall remain in full force and effect and any existing contracts and obligations relating to parks and recreation shall be performed by the division of tourism and parks.

(e) The unexpended balance existing on the effective date of this chapter in any appropriation made to the division of commerce is hereby transferred and appropriated to the division of tourism and parks.

The director of the division of natural resources and the commissioner of tourism and parks shall cooperate fully and exercise their powers to facilitate the development of new or the expansion of existing park facilities, including, but not limited to, the authorities as set forth in this chapter relating to the division of tourism and parks, and as set forth in section twenty, article one, chapter twenty of this code, relating to the division of natural resources, as amended from time to time.

§5B-1-12b. Conveyance of Grandview State Park to the National Park Service; governor, director of the division of natural resources and director of the division of tourism and parks.

The governor and the director of the division of natural resources may convey, within one year of the effective date of this section, the lands and property of Grandview State Park to the National Park Service of the government of the United States of America: Provided, That the National Park Service agrees to accept the conveyance: Provided, however, That the division of natural resources shall hold public hearings prior to making said conveyance. At least one public hearing shall be held in the county where the park is located.

The commissioner of the division of tourism and parks shall cooperate with and aid the division of natural
resources in the conveyance. The conveyance is subject to the provisions of article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

*§5B-1-13. Section of parks and recreation; purpose; powers and duties generally.

It shall be the duty of the section of parks and recreation to have within its jurisdiction and supervision:

(a) All state parks and state recreation areas, including all lodges, cabins, swimming pools, motorboating and all other recreational facilities therein, except the roads therein which, by reason of section one, article four, chapter seventeen of this code, are transferred to the state road system and to the responsibility of the commissioner of highways with respect to the construction, reconstruction and maintenance of the roads or any future roads for public usage on publicly owned lands in future state parks, state forests and public hunting and fishing areas;

(b) The authority and responsibility to do the necessary cutting and planting of vegetation along road rights-of-way in state parks and recreational areas;

(c) The administration of all laws and regulations relating to the establishment, development, protection, use and enjoyment of all state parks and state recreational facilities consistent with the provisions of this article: Provided, That nothing herein shall be construed to assign to the section of parks and recreation of the division of tourism and parks the law-enforcement duties set forth in article seven, chapter twenty of this code, which duties shall remain the responsibility of the division of natural resources;

(d) The Berkeley Springs sanitarium in Morgan County shall be continued as a state recreational facility under the jurisdiction and supervision of the division of

*Clerk's Note: §5B-1-13 was also amended by S. B. 563 (Chapter 103), which passed prior to this act.
tourism and parks and shall be managed, directed and
controlled as prescribed in this article and in article one,
chapter twenty of this code.

The commissioner shall have and is hereby granted all
of the powers and authority and shall perform all of the
functions and duties with regard to Berkeley Springs
sanitarium that were previously vested in and per-
formed by the director of the division of natural
resources, who shall no longer have such power and
authority and whose power and authority with regard
to Berkeley Springs sanitarium is hereby abolished;

(e) The Washington Carver camp in Fayette County
is hereby transferred from the division of natural
resources to the commissioner who shall have the
jurisdiction and supervision of the camp subject to the
jurisdiction and authority of the division of culture and
history as provided under section thirteen, article one,
chapter twenty-nine of this code. The commissioner shall
manage the Washington Carver camp as a state
recreational facility and a component of the state park
system;

(f) The improved recreational area of Camp Creek
State Forest in Mercer County, as delineated according
to section three, article one-a, chapter nineteen of this
code, is hereby renamed as the Camp Creek State Park
and under that name shall be managed as a state
recreational facility;

(g) The improved recreational area of Moncove Lake
public hunting and fishing area, consisting of all
improved recreational facilities, including all land
between the lake and private property beginning at the
main entrance on secondary route eight to the first
stream on the southwest side of the improved recrea-
tional area, approximately two hundred feet southwest
of the private property corner where it meets the
Roxalia Springs trail, thence northwest to a stream and
along this stream northward to and across the Diamond
Hollow trail to the area boundary, thence continuing
around area boundary to the lake shore, thence follow-
ing the lake shore around the shoreline to meet the line
drawn from the main entrance where the boundary begins. This area is hereby renamed as the Moncove Lake State Park and under that name shall be managed as a state recreational facility: Provided, That the boundary, as herein described, shall be plainly marked within ninety days of the effective date of this article; and

(h) The commissioner of the division of tourism and parks shall be primarily responsible for the execution and administration of the provisions herein as an integral part of the parks and recreation program of the state and shall organize and staff his section for the orderly, efficient and economical accomplishment of these ends.

§5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years' duration; renewal at option of commissioner; termination of contract by the commissioner; contracts for development of revenue producing facilities within the state parks and recreational facilities; level of investment of contracts; term of investment contract; reservation of option to renew; and purchase of investment in event of default and price determination upon such event.

(a) When it is deemed necessary by the commissioner to enter into a contract with a person, firm or corporation for the operation of a commissary, restaurant, recreational facility or other such establishment within the state parks and public recreation system, such contract shall be for a duration not to exceed ten years, but a contract so made may provide for an option to renew at the commissioner's discretion for an additional term or terms not to exceed ten years at the time of renewal.

Any contract entered into by the commissioner shall provide an obligation upon the part of the operator that he or she maintain a level of performance satisfactory
to the commissioner, and shall further provide that any
such contract may be terminated by the commissioner
in the event he or she determines that such performance
is unsatisfactory and has given the operator reasonable
notice thereof.

(b) When it is deemed necessary by the commissioner
to enter into a contract with a person, firm or corpora-
tion for the development of revenue producing facilities
within the state parks and public recreation system for
a period of more than ten years, such contract shall be
at least a one million dollar level of investment for such
revenue producing facilities. The term of the investment
contract may be up to twenty-five years of duration at
the determination of the commissioner and based upon
the amount of the investment and the achievement of the
environmental, recreational and cultural goals of the
state park or recreation areas system of this state.

Any contract so entered into may provide for an option
to renew at the discretion of the commissioner for an
additional term not to exceed an additional fifteen-year
term at the time of renewal.

Any such investment contract entered into by the
commissioner shall contain a provision for the purchase
of the investment upon an event of default on the part
of the investor on the contract. Such purchase may be
exercised only for default. The purchase price of the
investment shall be determined by determining a
percentage by dividing the number of years remaining
in the term of the contract at the time of default by the
number of years of the term of the contract and then
reducing the purchase price by such percentage of the
amount of the investment. The amount of the investment
shall be the actual cost of constructing the facilities, not
including overhead, called for in the contract, as
certified by a certified public accountant at the time the
facilities are completed. The contract shall provide that
the payments to the defaulting investor shall be made
in equal payments yearly during the remaining period
of the term of the contract.

(c) The commissioner may not solicit nor enter into
contracts, except for the operation of a commissary, restaurant or marina for a period of less than ten years, until a master plan for the administration of that state park or recreation area has been developed. He or she shall supervise the preparation of the plan and may utilize the staff of the division of natural resources or any other state governmental agency whose expertise he or she desires to enlist in the preparation thereof. The commissioner shall solicit public participation and involvement in all stages of the preparation of the plan and in the preparation of any requests for proposals for the development of a revenue producing facility, as described herein, with a contract duration in excess of ten years. The plan shall be consistent with the environmental, recreational and cultural goals of the state park and recreation areas system of the state and, to the extent practical, with the public comments and input received during plan development.

(d) If the commissioner considers a proposal for the development of a revenue producing facility, as described herein, such proposal shall be made available to the public in a convenient location in the county wherein the proposed facility may be located. The commissioner shall publish a notice of the proposal by Class I legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county in which the proposed facility would be located. Any citizen may communicate by writing to the commissioner his or her opposition or approval to such proposal within a period of not less than thirty days from the date of the publication of notice.

(e) No contract of a term greater than ten years may be entered into by the commissioner until a public hearing is held in the vicinity of the location of the proposed facility with at least two weeks notice of such hearing by Class I publication pursuant to section two, article three, chapter fifty-nine of this code. The commissioner shall make findings prior to rendering a decision on any proposed contract of a duration of more than ten years. All studies, records, documents and
other materials which are considered by the commissioner in making such findings as required herein shall be made available for public inspection at the time of the publication of the notice of public hearing and at a convenient location in the county where the proposed development may be located.

The commissioner shall make rules in accordance with chapter twenty-nine-a of this code for the conduct of the hearing required by this section. Persons attending such hearings shall be permitted a reasonable opportunity to be heard on the proposed development.

At such hearing the commissioner shall present in writing the following findings and supporting statements therefor:

(1) That the proposed development will not deprive users of the state park or recreational area of existing recreational facilities in any significant fashion;

(2) That the proposed development will not have substantial negative impact on the environmental, scenic or cultural qualities of the said park or area; and

(3) That the proposed development, considered as a whole, is of benefit to the recreational goals of the state and is consistent with the master plan developed for that park or recreational area.

(f) Following a public hearing as prescribed herein any interested person may submit to the commissioner written comments on the proposed development. All comments made at a hearing, in addition to those received in writing within thirty days after any such hearing, shall be considered by the commissioner in the determination of whether to approve the proposed development.

(g) The commissioner may not enter into any contract of a duration of more than ten years unless all procedures and requirements as prescribed by this section have been complied with.

(h) The commissioner shall make a decision whether to approve any proposal to enter into a contract for a
.duration of more than ten years within sixty days after
the conclusion of the hearing as specified herein.

§5B-1-16. Acquisition of former railroad subdivision for
establishment of Greenbrier River Trail; development, protection, operation and
maintenance of trail.

1 The commissioner may acquire from the West Virgini­
a railroad maintenance authority approximately
seventy-five miles of right-of-way along the former
Greenbrier subdivision of the Chessie Railroad System
between Caldwell in Greenbrier County and Cass in
Pocahontas County to be developed as the "Greenbrier
River Trail." The acquired property shall be operated
under the authority of the division of tourism and parks
and used for:

1 (1) The construction and maintenance of barriers for
the protection of the trail from motorized vehicular
traffic and for the protection of adjacent public and
private property; and

1 (2) The development, construction, operation and
maintenance of bicycle and hiking trails, horseback
trails, primitive camping facilities and other compatible
recreational facilities to be so designated by the
commissioner.

§5B-1-17. Correlation of projects and services.

1 The commissioner of the division of tourism and parks
shall correlate and coordinate his park and recreation
programs, projects and developments with the functions
and services of other offices and sections of the division
and other agencies of the state government so as to
provide, consistent with the provisions of this chapter,
suitable and adequate facilities, landscaping, personnel
and other services at and about all state parks and
public recreation facilities under his jurisdiction.

§5B-1-18. Sunset provision.

1 Unless sooner terminated by law, the division of
tourism and parks shall terminate on the first day of
July, one thousand nine hundred ninety-three, in
accordance with the provisions of article ten, chapter
type of business.

ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL
DEVELOPMENT.

§5B-2-2a. General powers of the office.
§5B-2-3. Divisions created.

§5B-2-2a. General powers of the office.

The office of community and industrial development
shall have the authority and duty to:

(1) Promote and encourage the location and develop-
ment of new business in the state and the maintenance
and expansion of existing business;

(2) Investigate and study conditions affecting West
Virginia business, industry and commerce; collect and
disseminate information, and engage in technical
studies, scientific investigations, statistical research and
educational activities necessary or useful for the proper
execution of the powers and duties of the department;

(3) Plan and develop an effective economic informa-
tion service that will directly assist business, education
and labor and also encourage businesses outside the
state to use industrial office facilities, professional,
labor, financial and recreational facilities, services and
products from within the state;

(4) Encourage and develop commerce with other
states and nations and devise methods of removing trade
barriers that hamper the free flow of commerce between
this and other states and nations and for these purposes
cooperate with governmental, quasi-public and private
organizations in formulating and promoting the adoption
of compacts and agreements helpful to commerce
and labor;

(5) Conduct or encourage research designed to further
new and more extensive uses of the natural, human,
professional, technical and other resources of the state
with a view to the development of new products,
industrial processes, services and markets;

(6) Compile periodically a census of business and
industry in the state, in cooperation with other agencies, and analyze and publish the information in such form as to be most valuable to business and industry;

(7) Study long-range trends and developments in the industries, commerce and economic health of the state, and analyze the reasons underlying such trends; study costs and other factors affecting successful operation and location of businesses within the state;

(8) Initiate, promote and conduct, or cause to be conducted, research designed to further new and more extensive uses and consumption of natural and other resources and their byproducts; and for such purposes, to enter into contracts and agreements with research laboratories maintained by educational or endowed institutions in this state;

(9) To establish as an independent entity at West Virginia University in cooperation with and involving other West Virginia colleges and universities a center for economic research. The center shall be under the control and supervision of a director, who shall be appointed by the president of West Virginia University. The center shall employ such staff economists or statisticians, such research assistants and secretaries, each of whom shall serve on a part-time basis and may be members of the faculty or staff of West Virginia University or any other college or university in the state. In addition, the center may employ student interns;

(10) The center shall provide the governor's office of community and industrial development, commissioner of tourism and parks and the Legislature with an analysis of the quality of economic data pertaining to West Virginia. The center shall recommend ways to obtain additional information necessary to better understand the state's economy and to devise better economic development strategies. The center is directed to establish priorities and coordinate its economic research functions with the governor and the Legislature. To accomplish this purpose the advisory board created for the institute of public affairs in section one, article twenty-six-b, chapter eighteen of this code, shall
serve as the advisory board to the center. The director of the center shall serve as the chairman of the advisory board. The center shall publish results of its research, maintain a comprehensive library with supporting computer data bases and shall, upon request, provide a review of the economy and major policy issues to the joint committee on government and finance;

(11) During its first year of operation, the center shall include in its research topics the desirability of establishing a detailed gross state products series, modeled after the national income and products accounts and the desirability of constructing a periodic input/output table for the state. It shall review the quality of current statistics relating to employment and prices and statistics relating to poverty and the distribution of income and wealth. The center may study the feasibility of, and, based upon such study, establish a West Virginia econometric model project;

(12) Where deficiencies are found in existing data sources, the center shall publish conclusions regarding the benefits to be derived from gathering additional or better information and shall make operational recommendations on the best possible methods for obtaining the desired information;

(13) The director of the center or members of its staff shall meet on a regular basis with the director of the governor's office of community and industrial development, the commissioner of tourism and parks, other officials of the department and members of the Legislature to provide the results of its research and to provide policy advice and analysis;

(14) The center shall develop and maintain an inventory of research efforts of universities and colleges and other institutions or businesses within the state and a register of scientific and technological research facilities in the state. That function may be performed by contract with the center for education and research with industry of the board of regents;

(15) The governor's office of community and industrial development shall assist, promote, encourage,
develop and advance economic prosperity and employment throughout this state by fostering the expansion of exports of manufactured goods and services to foreign purchasers and the investment of capital by foreign countries in this state;

(16) The governor's office of community and industrial development shall cooperate and act in conjunction with other organizations, public and private, the objects of which are the promotion and advancement of export trade and foreign investment activities in the state of West Virginia;

(17) The governor's office of community and industrial development shall consider establishing a source of funding credit guarantees and insurance to support export development not otherwise available to West Virginia small and medium sized businesses;

(18) The governor's office of community and industrial development shall develop a strategic plan for the economic development of the state, its regions and specific industries including tourism, manufacturing, timber, agriculture and other rural development, coal, oil, gas and other extractive resources, retail, service, distribution and small businesses. Such a plan shall emphasize a coordinated effort of the public and private sector toward balanced growth for the state. Such plan shall include, but is not limited to, the following:

(A) Assessing the state's economic strengths and weaknesses;

(B) Developing and recommending short, intermediate and long-term economic goals and plans, together with options;

(C) Identifying barriers to economic growth and diversification in the state;

(D) Recommending implementation procedures and options utilizing and maximizing existing public and private mechanism;

(E) Fostering and supporting scientific and technological research in this state in cooperation with the
(F) Developing a program to attract investment in research and development in high technology industries;

(G) Conducting a series of studies to determine the feasibility of constructing natural gas transmission lines, electric power generating facilities and coal processing plants to be owned, either in whole or in part, or to be operated, either in whole or in part, by the state of West Virginia; and

(H) Maintaining a library of research materials, including computer data bases, to accomplish the goals of the division.

§5B-2-3. Divisions created.

There are hereby created within the office of community and industrial development:

(1) The division of community development;

(2) The division of financial and technical assistance;

(3) The division of administration;

(4) The division of industrial development;

(5) The division of employment and training;

(6) The division of small business development; and

(7) The division of small business.

Each said division shall be under the control of a director to be appointed by the director of the office of community and industrial development and who shall be qualified by reason of exceptional training and experience in the field of activities of his respective division and shall serve at the will and pleasure of the director.

The governor is hereby authorized to establish and maintain foreign trade offices, personnel for same and attendant services.
ARTICLE 2D. WEST VIRGINIA GUARANTEED WORK FORCE PROGRAM.

§5B-2D-1. Short title.
This article shall be known and may be cited as the “West Virginia Guaranteed Work Force Program.”

§5B-2D-2. Definitions.
(a) “GOCID” shall mean the Governor’s Office of Community and Industrial Development;
(b) “Employer” shall mean an individual, partnership, corporation, or other legal entity that employs or plans to employ skilled workers;
(c) “Retraining and job upgrade” shall mean the specialized training that is given to an identified level of employees to enable them to advance to a higher level of employment;
(d) “Program” shall mean the West Virginia Guaranteed Work Force Program established pursuant to section three;
(e) “Training” shall mean custom-designed training given to employees or prospective employees of new or expanding businesses and industries within the state;
(f) “Training provider” shall mean any persons, public or private educational institutions, agencies, companies or other entities that may be utilized for training or consultative services for an employer.

§5B-2D-3. Training program.
The GOCID shall develop a business and industrial training program, the purpose of which is to provide assistance for new or expanding businesses for the training, retraining or upgrading of the skills of...
potential employees. The program shall emphasize employee training specifically designed to accommodate the needs of individual employers. The program shall encourage the expansion of existing businesses and industries within the state, promote retention of businesses and industries within the state, promote retention of existing jobs within the state, prevent economic and industrial out-migration, and assist in the relocation of out-of-state businesses and industries in the state. Under this program, GOCID may pay up to one hundred percent (100%) or one thousand dollars ($1,000) per employee, whichever is less, of the training costs of new employees in firms creating at least fifty (50) jobs in a one-year period. Training assistance may also be provided to existing businesses in cases in which training, retraining or upgrading services will result in the creation of additional jobs: Provided, That GOCID may pay up to one hundred percent (100%) or one thousand dollars ($1,000) per employee, whichever is less, for the training, retraining or upgrading. Training costs associated with this program will be paid directly by GOCID to the training provider.

Provision of training services will depend upon employer hiring performance and projections which meet the fifty (50) jobs per year requirement. The state of West Virginia guarantees if employer satisfaction is not achieved, GOCID will upon a review of the program with the employer and the training provider arrange retraining of employees to meet the employer's specifications and satisfaction: Provided, That in no instance may the cost of training and retraining an employee exceed two thousand dollars ($2,000).

§5B-2D-4. Funds.

The funds made available by this section shall supplement but not displace funds available through existing programs conducted by employers themselves and public programs such as the Job Training Partnership Act (JTPA), the Carl D. Perkins Vocational Education Act, the Stewart B. McKinney Homeless Assistance Act, and the JOBS Act, or apportionment fund allocated to the community colleges, regional
occupational centers and programs, or other local educational agencies. In addition, it is further the intention of the Governor's Office of Community and Industrial Development that the program established pursuant to this section shall not replace, parallel, supplant, compete with, or duplicate in any way existing, approved apprenticeship programs.

The fund shall consist of all moneys which may be transferred to it by the West Virginia Economic Development Authority (WVEDA) and also any contributions, grants or bequests received from federal, private or other sources. Appropriations made from the funds shall be for the purpose of providing contractual services through GOCID for vocational related training or retraining provided by public or private training institutions within West Virginia and for contracted services through the GOCID for vocational related training, retraining or upgrading provided by public or private training institutions located outside of West Virginia and for vocational related training or retraining provided on site, within West Virginia by any training provider as defined in this article.

§5B-2D-5. Program activities.

The primary concern in the provision of training services shall be the needs and type of services identified by the employer. A college or university, community college or area vocational education center shall be given initial consideration to provide any training, retraining, or job upgrade training. The employer will have the opportunity to participate in the selection of a training provider. Training services may begin upon execution of a written agreement between GOCID and the employer.

Program activities may include, but not be limited to, the following:

(a) Perform a job skills analysis and design a training curriculum for an employer.

(b) Recruit and refer trainee applicants to an employer.
(c) Provide off site preemployment training, or on site preemployment training if off site preemployment training is not practical, to prospective employees of a new or expanding business or industry and to existing employees for purposes of retraining or upgrading.

(d) Retrain employees in response to a technological change.

(e) Provide job upgrade training if the training will increase the employer's total work force.

(f) Contract with persons, public or private educational institutions, agencies, or other bodies for training or consultative services for an employer.

(g) Provide materials and supplies used in the training process, instructors with specialized skills, instructional training aids and equipment, consultative services relative to highly specific or technical data, and other services.

(h) Assist a foreign employer locating or expanding in this state by familiarizing the employer's foreign personnel with the work attitudes, work methods, expectations, customs, and life style of employees who work within this state.

(i) Take other action that is considered to be necessary or desirable for the furtherance of this article.

(j) No funds shall be awarded or reimbursed to any business or industry for the training, retraining or upgrading of skills of potential employees with the purpose of replacing or supplanting employees engaged in an authorized work stoppage.

§5B-2D-6. Reporting.

The office shall file a report with the Legislature and the governor at the end of each fiscal year, commencing June thirtieth, one thousand nine hundred ninety. This report shall include the following:

(a) The number of persons trained and their demographics.

(b) The number of persons placed in employment.
(c) The number of employers for which persons have been trained and placed.
(d) The number of persons trained and placed for each employer.
(e) The types of work for which persons have been trained.
(f) The source of training fund.
(g) The overall effectiveness of this article in contributing to economic stabilization and business and industrial growth within this state. In addition, the Governor's Office of Community and Industrial Development shall report on a quarterly basis to the joint commission on vocational, technical and occupational education, the following as they relate to the training program established by this article:

1. The names of all companies approved for training during the reporting quarter.
2. The names of all companies receiving funding for training during the reporting quarter.
3. The amount and source of funds utilized for each training program.
4. The type of training being delivered.
5. The number of employees trained.
6. Those agencies providing the training.

§5B-2D-7. Marketing.

The Governor's Office of Community and Industrial Development shall market and promote the program.

CHAPTER 72

(Com. Sub. for H. B. 4800—By Mr. Speaker, Mr. Chambers, and Delegate Farley)

[Passed March 10, 1990: in effect from passage. Approved by the Governor.]
findings; creating special fund to be used for job training program; authorizing transfers into such fund by authority; specifying source of such transfers, and specifying maximum amount thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6a. Special power of authority to transfer funds; limitations; fund created; use of funds to provide customized job training program by governor’s office of economic and community development.

(a) The Legislature finds and declares that in order to attract the new business and industry to this state and retain the business and industry in this state which provide the citizens of this state with economic security; to advance the business prosperity and economic welfare of this state and to assure a pool of qualified employees it is necessary that a training program exist to provide both unemployed and under-employed workers of this state a means to acquire or improve their working skills so as to insure availability of qualified employees that is fundamental for business and industry to prosper.

(b) The authority is hereby empowered to transfer to the special revenue fund herein created, a sum of money not to exceed two million five hundred thousand dollars, to be used by the governor’s office of community development to establish, administer and operate a customized job training program. The authority may only make transfers to said fund between the time period commencing with the effective date of this section and ending the last day of June, one thousand nine hundred ninety-one. Such transfers may only be made from repayments of principal amounts from loans made by the authority where such repayments of principal are available for such use and are not
otherwise restricted. Transfers into the special revenue
fund created above may be made at such times and in
such amounts as the authority, in its discretion, deems
reasonable: Provided, That the total amount of all such
transfers may not exceed two million five hundred
thousand dollars in the aggregate.

(c) There is hereby created in the state treasury a
special revenue fund entitled the "Governor's Office of
Community and Industrial Development Customized
Job Training Program Fund." This fund shall consist of
moneys paid into such fund in accordance with this
section. Moneys in said fund shall be used by the
governor's office of community and industrial develop-
ment to establish and administer a customized job
training program to meet the needs of expanding
business and industry or to create new jobs, and the
governor's office of community and industrial develop-
ment may make such withdrawals from this fund as
required to establish and administer said customized job
training program.

CHAPTER 73
(S. B. 193—By Senators Holliday and Blatnik)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section one-a, article two, chapter two of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended; to amend and reenact section
fifteen, article five, chapter eighteen of said code; and
to amend and reenact section two, article five, chapter
eighteen-a of said code, all relating to reducing the
number of out of school environment days from seven
to six; designating Martin Luther King's birthday as a
legal school holiday; removing an obsolete term from the
code; and repealing an obsolete code section to comport
with the bill.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; exception; levies; ages of persons to whom schools are open.

(a) The board shall provide a school term for its schools which shall be comprised of (1) an employment term for teachers, and (2) an instructional term for pupils. Nothing in this section shall prohibit the establishment of year-round schools in accordance with rules to be established by the state board.

The employment term for teachers shall be no less than ten months, a month to be defined as twenty employment days exclusive of Saturdays and Sundays: Provided, That the board may contract with all or part of the personnel for a longer term. The employment term shall be fixed within such beginning and closing dates as established by the state board: Provided, however, That the time between the beginning and closing dates does not exceed forty-three weeks.

Within the employment term there shall be an instructional term for pupils of not less than one hundred eighty nor more than one hundred eighty-five instructional days: Provided, That the minimum instructional term may be decreased, by order of the state superintendent of schools, in any West Virginia county declared to be a federal disaster area by the federal emergency management agency. Instructional and noninstructional activities may be scheduled during the same employment day. Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach. The instructional term shall
commence no earlier than the first day of September
and shall terminate no later than the eighth day of June.

Noninstructional days in the employment term may
be used for making up canceled instructional days,
curriculum development, preparation for opening and
closing of the instructional term, in-service and profes-
sional training of teachers, teacher-pupil-parent confer-
ences, professional meetings and other related activities.
In addition, each board shall designate and schedule for
teachers and service personnel six days to be used by
the employee outside the school environment. However,
no more than eight noninstructional days, except
holidays, may be scheduled prior to the first day of
January in a school term.

Notwithstanding any other provisions of the law to the
contrary, if the board has canceled instructional days
equal to the difference between the total instructional
days scheduled and one hundred seventy-eight, each
succeeding instructional day canceled shall be resched-
duled, utilizing only the remaining noninstructional
days, except holidays, following such cancellation, which
are available prior to the second day before the end of
the employment term established by such county board.

Where the employment term overlaps a teacher's or
service personnel's participation in a summer institute
or institution of higher education for the purpose of
advancement or professional growth, the teacher or
service personnel may substitute, with the approval of
the county superintendent, such participation for not
more than five of the noninstructional days of the
employment term.

The board may extend the instructional term beyond
one hundred eighty-five instructional days provided the
employment term is extended an equal number of days.
If the state revenues and regular levies, as provided by
law, are insufficient to enable the board of education to
provide for the school term, the board may at any
general or special election, if petitioned by at least five
percent of the qualified voters in the district, submit the
question of additional levies to the voters. If at the
election a majority of the qualified voters cast their
ballots in favor of the additional levy, the board shall
fix the term and lay a levy necessary to pay the cost of
the additional term. The additional levy fixed by the
election shall not continue longer than five years without
submission to the voters. The additional rate shall not
exceed by more than one hundred percent the maximum
school rate prescribed by article eight, chapter eleven
of the code, as amended.

(b) The Legislature finds and declares that excess
levies as they currently exist create unequal educational
opportunities from county to county based on the
difference in the will of the voters and also based on the
differences in property wealth among the counties; that
prior to the first day of July, one thousand nine hundred
ninety-four, the Legislature shall proceed to equalize
educational opportunities over and above the opportun-
ities afforded by each county's property values by
considering the existence or nonexistence of excess
levies as a factor in the distribution of equity moneys;
and that on and after the first day of July, one thousand
nine hundred ninety-four, the Legislature shall imple-
ment a plan for the equitable distribution of funds so
as to eliminate the inequities resulting from county
excess levies.

(c) The public schools shall be open for the full
instructional term to all persons who have attained the
entrance age as stated in section five, article two and
section eighteen, article five, chapter eighteen of this
code: Provided, That persons over the age of twenty-one
may enter only those programs or classes authorized by
the state board of education and deemed appropriate by
the county board of education conducting any such
program or class: Provided, however, That authorization
for such programs or classes shall in no way serve to
affect or eliminate programs or classes offered by
county boards of education at the adult level for which
fees are charged to support such programs or classes.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.
§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.

Schools shall not be kept open on any Saturday nor on the following days which are designated as legal school holidays, namely: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's birthday, Memorial Day and any day on which a primary election, general election or special election is held throughout the state or school district and any day appointed and set apart by the president or the governor as a holiday of special observance by the people of the state.

When any such holiday falls within the employment term, it shall be considered as a day of the employment term and the full-time school personnel shall receive his or her pay for same. When any of the above designated holidays, except a special election, falls on Saturday, the schools shall be closed on the preceding Friday; when any such falls on Sunday, the schools shall be closed on the following Monday.

Special classes may be conducted on Saturdays, provided they are conducted on a voluntary basis, for pupils and by teachers and service personnel, and that such teachers and service personnel shall be remunerated in ratio to the regularly contracted pay.

Any school or schools may be closed by proper authorities on account of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control. Under any or all of the above provisions, the time lost by the closing of schools is counted as days of employment and as meeting a part of the requirements of the minimum term of one hundred eighty days of instruction. On such day or days, county boards of education may provide appropriate alternate work schedules for professional and service personnel affected by the closing of any school or schools under any or all of the above provisions. Professional and service personnel shall receive pay the same as if school were in session. Insofar as funds are available or can be made available during the school
year, the board may extend the employment term for
the purpose of making up time that might affect the
instructional term.

In addition to any other provisions of this chapter, the
board is further authorized to provide in its annual
budget for meetings, workshops, vacation time or other
holidays through extended employment of personnel at
the same rate of pay.

CHAPTER 74
(Com. Sub. for H. B. 2219—By Delegate Sattes)

[Pas the March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article two,
chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to
amend and reenact section three, article one, chapter
twenty-nine-a of said code; to amend and reenact
sections one and eleven-a, article three-a, chapter
twenty-nine-a of said code; and to further amend said
chapter twenty-nine-a by adding thereto a new article,
designated article three-b, all relating to providing for
adequate public participation in the promulgation of
state board of education rules; exempting the secondary
schools activities commission from the provisions of this
article; redefining "board"; providing for the collection
and preservation of state board of education rules in a
manner easily accessible to the public; providing a
process for clarification of legislative intent of statutes
upon which state board of education rules are based; and
changing obsolete code language and code references.

Be it enacted by the Legislature of West Virginia:

That section five-a, article two, chapter eighteen of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; that section three,
article one, chapter twenty-nine-a of said code be amended and
reenacted; that sections one and eleven-a, article three-a,
chapter twenty-nine-a be amended and reenacted; and that
said chapter twenty-nine-a be further amended by adding
there to a new article, designated article three-b, all to as follows:

Chapter
18. Education.
29A. State Administrative Procedures.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5a. Board rules to be filed with Legislature.

1 The state board of education shall file a copy of any rule that it proposes to promulgate, adopt, amend or repeal under the authority of the constitution or of this code with the legislative oversight commission on education accountability pursuant to article three-b, chapter twenty-nine-a of this code. "Rule," as used herein, means a regulation, standard, statement of policy, or interpretation of general application and future effect.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

Article
1. Definitions and Application of Chapter.
3B. State Board of Education Rule Making.

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-3. Application of chapter; limitations.

(a) The provisions of this chapter do not apply in any respect whatever to executive orders of the governor, which orders to the extent otherwise lawful shall be effective according to their terms: Provided, That the executive orders shall be admitted to record in the state register when and to the extent the governor deems suitable and shall be included therein by the secretary of state when tendered by the governor.

(b) Except as to requirements for filing in the state register, and with the Legislature or its rule-making review committee, provided in this chapter or other law, the provisions of this chapter do not apply in any respect
whatever to the West Virginia board of probation and parole, the public service commission, the board of public works sitting as such and the secondary schools activities commission: Provided, That rules of such agencies shall be filed in the state register in the form prescribed by this chapter and be effective no sooner than sixty consecutive days after being so filed: Provided, however, That the rules promulgated by the state colleges and universities shall only be filed with the higher education governing boards: Provided further, That such agencies may promulgate emergency rules in conformity with section fifteen, article three of this chapter.

(c) The provisions of this chapter do not apply to rules relating to or contested cases involving the conduct of inmates or other persons admitted to public institutions, the open seasons and the bag, creel, size, age, weight and sex limits with respect to the wildlife in this state, the conduct of persons in military service or the receipt of public assistance. Such rules shall be filed in the state register in the form prescribed by this chapter and be effective upon filing.

(d) Nothing herein shall be construed to affect, limit or expand any express and specific exemption from this chapter contained in any other statute relating to a specific agency, but such exemptions shall be construed and applied in accordance with the provisions of this chapter to effectuate any limitations on such exemptions contained in any such other statute.

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.


§29A-3A-11a. Additional powers and duties; subpoena powers.


1 As used in this article:

2 (a) "Commission" means the legislative oversight commission on education accountability;

4 (b) "Board" means the university of West Virginia board of trustees or the board of directors of the state college system as defined in chapter eighteen-b of this
code, or both, or any person employed by such boards
who is granted rule-making authority under the
provisions of said chapter.

§29A-3A-11a. Additional powers and duties; subpoena
powers.

(a) In addition to the powers and duties conferred
upon the commission pursuant to the provisions of this
article, the commission shall make a continuing inves-
tigation, study and review of the practices, policies and
procedures of the board and of any and all matters
related to education in the state and shall make annual
reports to the Legislature of the results of such
investigation, study and review.

(b) These reports shall describe and evaluate in a
concise manner:

(1) The major activities of the board for the fiscal year
immediately past, including important policy decisions
reached on initiatives undertaken during that year,
especially as such activities, decisions and initiatives
relate to the implementation of (1) the constitutional
requirement of providing a thorough and efficient
education to the children of this state and (2) the
objective of improving the quality of education at all
levels in this state.

(2) Other information considered by the commission
to be important, including recommendations for statu-
tory, fiscal or other reform and reasons for such
recommendations.

Further, these reports may specify in what manner
said practices, policies and procedures may or should be
modified to satisfy said constitutional requirement and
to improve the quality of education at all levels in this
state.

The commission may meet as often as may be
necessary and employ such professional, clerical and
technical personnel as it considers necessary to perform
effectively the duties herein prescribed.

(c) The commission shall conduct a study to determine
whether the bureaucracies of the state board of education and each county board of education are of such size and complexity that they do not best serve the educational needs of the children of the state. The commission may request assistance from the legislative auditor to conduct this study.

(d) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation. All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission may administer oaths or affirmations to such witnesses. To compel the attendance of witnesses at such hearings or the production of any books, records, documents, papers or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the cochairmen, in accordance with section five, article one, chapter four of this code. Such subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

If any person subpoenaed to appear at any hearing shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers or any other tangible thing within his control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

ARTICLE 3B. STATE BOARD OF EDUCATION RULE MAKING.

§29A-3B-1. Definitions.
§29A-3B-2. Rules to be promulgated in accordance with this article.
§29A-3B-3. Rules of procedure required.
§29A-3B-4. Filing of proposed rules.
§29A-3B-5. Notice of proposed rule making.

§29A-3B-6. Filing findings and determinations for rules in state register; evidence deemed public record.


§29A-3B-8. Adoption of rules.

§29A-3B-9. Submission of legislative rules to the legislative oversight commission on education accountability.

§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.


§29A-3B-1. Definitions.

As used in this article:

(a) “Commission” means the legislative oversight commission on education accountability created in section eleven, article three-a of this chapter.

(b) “Board” means the West Virginia board of education.

§29A-3B-2. Rules to be promulgated in accordance with this article.

In addition to other rule-making requirements imposed by law and except to the extent specifically exempted by the provisions of this chapter or other applicable law, every rule and regulation (including any amendment of or rule to repeal any other rule) shall be promulgated by the board in accordance with this article and shall be and remain effective only to the extent that it has been or is promulgated in accordance with this article.

§29A-3B-3. Rules of procedure required.

In addition to other rule-making requirements imposed by law:

(a) The board shall adopt procedural rules governing the formal and informal procedures prescribed or authorized by this chapter. Procedural rules shall include rules of practice before the board, together with forms and instructions.

(b) To assist interested persons dealing with it, the
§29A-3B-4. Filing of proposed rules.

(a) When the board proposes a procedural, interpretive or legislative rule, the agency shall file in the state register a notice of its action, including the text of the rule as proposed.

(b) All proposed rules filed under subsection (a) of this section shall have a fiscal note attached itemizing the cost of implementing the rules as they relate to this state and to persons affected by the rules and regulations. Such fiscal note shall include all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents. The objectives of the rules shall be clearly and separately stated in the fiscal note by the agency issuing the proposed rules. No procedural or interpretive rule shall be void or voidable by virtue of noncompliance with this subsection.

§29A-3B-5. Notice of proposed rule making.

When the board proposes to promulgate a rule other than an emergency rule, it shall file in the state register a notice of its action, including a text of the rule proposed, a fiscal note as defined in subsection (b) of section four, and any request for the submission of evidence to be presented on any factual determinations or inquiries required by law to promulgate such rule. If the board is considering alternative draft proposals, it may include the text thereof.

The notice shall fix a date, time and place for the taking of evidence for any findings and determinations which are a condition precedent to promulgation of the proposed rule and contain a general description of the issues to be decided. If no findings and determinations are required as a condition precedent to promulgation, the notice shall fix a date, time and place for receipt of public comment on such proposed rule.

If findings and determinations are a condition
precedent to the promulgation of such rule, then an
opportunity for public comment on the merits of the rule
shall be afforded after such findings and determinations
are made. In such event, notice of the hearing, or of the
period for receiving public comment on the proposed
rule, shall be attached to and filed as a part of the
findings and determinations of the board when filed in
the state register.

In any hearing for public comment on the merits of
the rule, the board may limit presentations to written
material. The time, date and place fixed in the notice
shall constitute the last opportunity to submit any
written material relevant to any hearing, all of which
may be earlier submitted by filing with the board.

The board may also, at its expense, cause to be
published as a Class I legal publication in every county
of the state, any notice required by this section.

Any citizen or other interested party may appear and
be heard at such hearings as are required by this
section.

§29A-3B-6. Filing findings and determinations for rules
in state register; evidence deemed public record.

(a) Incident to fixing a date for public comment on a
proposed rule, the board shall promulgate the findings
and determinations required as a condition precedent
thereto, and state fully and succinctly the reasons
therefor and file such findings and determinations in the
state register. If the board amends the proposed rule as
a result of the evidence or comment presented pursuant
to section five, such amendment shall be filed with a
description of any changes and statement listed for the
amendment.

(b) The statement of reasons and a transcript of all
evidence and public comment received pursuant to
notice are public records and shall be carefully pre-
served by the board and be open for public inspection
and copying for a period of not less than five years from
the date of the hearing.

Notices of hearings required by section five of this article shall be filed in the state register not less than thirty nor more than sixty days before the date of such hearing or the last day specified therein for receiving written material. Any hearing may be continued from time to time and place to place by the board which shall have the effect of extending the last day for receipt of evidence or public comment. Notice of such continuance shall be promptly filed thereafter in the state register.

§29A-3B-8. Adoption of rules.

A rule shall be considered by the board for adoption not later than six months after the close of public comment and a notice of withdrawal or adoption shall be filed in the state register within that period. Failure to file such notice shall constitute withdrawal and the secretary of state shall note such failure in the state register immediately upon the expiration of the six-month period.

A rule may be amended by the board prior to final adoption without further hearing or public comment. No such amendment may change the main purpose of the rule. If the fiscal implications have changed since the rule was proposed, a new fiscal note shall be attached to the notice of filing. Upon adoption of the rule (including any such amendment), the board shall file the text of the adopted rule with its notice of adoption in the state register and the same shall be effective on the date specified in the rule or thirty days after such filing, whichever is later.

§29A-3B-9. Submission of legislative rules to the legislative oversight commission on education accountability.

(a) When the board finally adopts a legislative rule, the board shall submit to the legislative oversight commission on education accountability at its offices or at a regular meeting of such commission ten copies of (1) the full text of the legislative rule as finally approved by the board, with new language underlined and with
language to be deleted from any existing rule stricken through but clearly legible; (2) a brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal; (3) a statement of the circumstances which require the rule; (4) a fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents; and (5) any other information which the commission may request or which may be required by law.

(b) The commission shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.
(c) After reviewing the legislative rule, the commission shall recommend to the Legislature any statutory changes needed to clarify the legislative intent of the statute upon which the rule is based or to otherwise modify the activity subject to the rule, or may make such other recommendations to the Legislature or the board, or both, as it deems appropriate.

§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.

(a) The board may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the state register and shall become effective immediately upon such filing. Such emergency rules may adopt, amend or repeal any legislative rule, but the circumstances constituting the emergency requiring such adoption, amendment or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their validity. Ten copies of the rules and of the required statement shall be filed forthwith with the legislative oversight commission on education accountability.

An emergency rule shall be effective for not more than fifteen months and shall expire earlier if any of the following occurs:

(1) The board has not previously filed and fails to file a notice of public hearing on the proposed rule within sixty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the sixty-first day.

(2) The board has not previously filed and fails to file the proposed rule with the legislative oversight commission on education accountability within one hundred eighty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the one hundred eighty-first day.
(3) The board adopts a legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated, and in which case the emergency rule expires on the date the authorized rule is made effective.

(b) Any amendment to an emergency rule made by the board shall be filed in the state register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (1), (2) or (3), subsection (a) of this section.

(c) Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (1), (2) or (3), subsection (a) of this section, the board may not refile the same or similar rule as an emergency rule.

(d) Emergency legislative rules currently in effect under the prior provisions of this section may be refiled under the provisions of this section.

(e) The provision of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(f) The legislative oversight commission on education accountability may review any emergency rule to determine (1) whether the board has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of such rule; and (3) whether the rule was promulgated in compliance with the requirements and prohibitions contained in this section. The commission may recommend to the board, the Legislature, or the secretary of state such action as it may deem proper.

The legislative oversight commission on education accountability may review any procedural rules, interpretive rules or existing legislative rules and may make recommendations concerning such rules to the Legislature, or to the board, or to both the Legislature and the board.


Any rule lawfully promulgated prior to the effective date of this chapter shall remain in full force and effect until:

1. Such rule is expressly made ineffective by the provisions of this chapter; or
2. Such rule should expire by reason of failure to refile the same as provided in section five of article two, or expires pursuant to its own terms and provisions lawfully made before the effective date of this section; or
3. Such rule is repealed by the lawful act of the board, in conformity with this chapter; or
4. Such rule is invalidated by an act of the Legislature or the force and effect of another law.

CHAPTER 75
(Com. Sub. for H. B. 4648—By Delegates Mezzatesta and Murensky)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to school personnel; providing that the cost of a commercial driver's license of a school employee or qualified applicant who becomes an employee be paid for by the county board of education if the license is a condition of employment; and requiring the division of motor vehicles to accept other test results in certain instances.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. SCHOOL PERSONNEL.


1 If a commercial driver's license is required as a condition of employment for any school employee or qualified applicant who becomes an employee by a county board of education, the cost shall be paid in full by the employer.

2 It is unlawful for any county board of education to require any employee or applicant who becomes an employee of the board to pay the cost of acquiring a commercial driver's license as a condition of employment.

3 The division of motor vehicles shall accept the West Virginia department of education and the arts physical and psychomotor test result forms in lieu of the division of motor vehicles vision report form.

CHAPTER 76
(Com. Sub. for H. B. 4560—By Delegates Long and Ashcraft)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to in-field master's degree generally; revising the definition; establishing the conditions for additional compensation; and providing for availability of course work.

Be it enacted by the Legislature of West Virginia:
That section one, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-1. Definitions.

For the purpose of this section, salaries shall be defined as: (a) "Basic salaries" which shall mean the salaries paid to teachers with zero years of experience and in accordance with the classification of certification and of training of said teachers; and (b) "advanced salaries" which shall mean the basic salary plus an experience increment based on the allowable years of experience of the respective teachers in accordance with the schedule established herein for the applicable classification of certification and of training of said teachers.

"Classification of certification" means the class or type of certificate issued by the state superintendent of schools under the statutory provisions of this chapter. "Classification of training" means the number of collegiate or graduate hours necessary to meet the requirements stipulated in the definitions set forth in the next paragraph in items (2) to (11), inclusive.

The column heads of the state minimum salary schedule set forth in section two of this article are defined as follows:

(1) "Years of experience" means the number of years the teacher has been employed in the teaching profession, including active work in educational positions other than the public schools, and service in the armed forces of the United States if the teacher was under contract to teach at the time of induction. For a registered professional nurse employed by a county board of education, "years of experience" means the number of years the nurse has been employed as a public school health nurse, including active work in a nursing position related to education, and service in the armed forces if the nurse was under contract with the county board at the time of induction. For the purpose
of section two of this article, the experience of a teacher
or a nurse shall be limited to that allowed under their
training classification as found in the minimum salary
schedule.

(2) "Fourth class" means all certificates previously
identified as (a) "certificates secured by examination,"
and (b) "other first grade certificates."

(3) "Third class" means all certificates previously
identified as (a) "standard normal certificates" and (b)
"third class temporary (sixty-four semester hours)
certificates."

(4) "Second class" means all certificates previously
identified as "second class temporary certificates based
upon the required ninety-six hours of college work."

(5) "B.A." means a bachelor's degree, from an accred-
dited institution of higher education, which has been
issued to, or for which the requirements for such have
been met by, a person who qualifies for or holds a
professional certificate or its equivalent. A registered
professional nurse with a bachelor's degree, who is
licensed by the West Virginia board of examiners for
registered professional nurses and employed by a county
board of education, shall be within this classification for
payment in accordance with sections two and two-a of
this article.

(6) "B.A. plus 15" means a bachelor's degree as
defined above plus fifteen hours of graduate work, from
an accredited institution of higher education certified to
do graduate work, in an approved planned program at
the graduate level which requirements have been met
by a person who qualifies for or holds a professional
certificate or its equivalent.

(7) "M.A." means a master's degree, earned in an
institution of higher education approved to do graduate
work, which has been issued to, or the requirements for
such have been met by, a person who qualifies for or
holds a professional certificate or its equivalent.

(8) "M.A. plus 15" means the above-defined master's
degree plus fifteen hours of graduate work, earned in
an institution of higher education approved to do graduate work, if the person is qualified for or holds a professional certificate or its equivalent.

(9) "M.A. plus 30" means the above-defined master's degree plus thirty graduate hours, earned in an institution approved to do graduate work, if the person is qualified for or holds a professional certificate or its equivalent.

(10) "Doctorate" means a doctor's degree, earned from a university qualified and approved to confer such a degree, which has been issued to or the requirements for such have been met by a person who qualifies for or holds a professional certificate or its equivalent.

(11) "In-field master's" means the above-defined master's degree and one of the following:

(a) Twenty-four (24) semester hours of post baccalaureate graduate credit, within or external to the advanced degree, confined to one specialization completed at the undergraduate level on the educator's professional certificate or its equivalent, or

(b) A master's degree earned prior to the first day of July, one thousand nine hundred ninety-four, in (i) a program specialization completed at the undergraduate level, or (ii) a state approved subarea of the specialization which is consistent with a specialization, completed at the undergraduate level, on the educator's professional certificate or its equivalent, or

(c) Twelve (12) semester hours of graduate credit above and beyond the course work completed for the endorsement recognized for in-field master's classification only if the course work for the endorsement was also completed at the graduate level: Provided, That in certification areas where the total course work requirements for initial certification exceed the minimum required for in-field classification, the state department of education may by rule establish exceptions.

Notwithstanding the requirements set forth in subdivisions (6), (8) and (9) of this section relating to hours of graduate work at an institution certified to do such
work, fifteen undergraduate credit hours from a regionally accredited institution of higher education, earned after the effective date of this section, may be utilized for advanced salary classification if such hours are in accordance with (a) the teacher's current classification of certification and of training, (b) a designated instructional shortage area documented by the employing county superintendent, or (c) an identified teaching deficiency documented through the state approved county personnel evaluation system.

In-field master's compensation is contingent upon recognition of the in-field master's classification and the educator's assignment. The West Virginia board of education shall establish regulations for the administration and implementation of the in-field master's salary schedule.

Only those professional educators who are assigned to teach, for a minimum of fifty (50) percent of the instructional day, subjects which are consistent with the endorsement(s) recognized as meeting the in-field master's classification shall be eligible for compensation based on the in-field master's schedule. If scheduling constraints prevent the educator from being assigned to endorsements recognized for the in-field master's classification for a minimum of fifty (50) percent of the instructional day, the educator may petition the county board of education for such compensation. After review, the county board of education shall submit the petition to the state department of education on behalf of the educator for determination of in-field master's compensation. Such petitions must be filed on an annual basis.

If a professional educator, who was previously employed in an area recognized for in-field master's classification, is reassigned to work full-time in an area not recognized on said educator's certificate for in-field master's classification as a result of (1) voluntary reassignment to assist the county in meeting a critical staffing need or (2) a reduction in force, the educator may petition the county board of education for continued payment under the in-field master's salary schedule. After review, the county board of education shall
petition the state department of education on an annual basis to continue such payment. In no case shall approval be granted for more than three years. The county board of education must provide documentation to justify each request.

Upon request for a specific master's degree program, the appropriate governing board of higher education shall provide all of the course work for a master's degree program that is designated as in-field for the certification area of the professional educator who makes the request. The course work for such program shall be initiated no later than two years from the date requested and shall be provided to the greatest extent feasible within each regional educational service agency area in which the request has been made as follows: (1) Via satellite instruction; (2) via public television home instruction; or (3) in a manner prescribed by such governing board. If the governing board fails to initiate the course work within the above time period, an individual shall be compensated at the appropriate level of years of experience on the in-field master's salary schedule whenever the individual has obtained any master's degree related to the public school program.

The appropriate governing board of higher education shall develop a plan to provide "M. A." classification programs to professional educators throughout this state by the first day of January, one thousand nine hundred ninety-one, with the objective being to provide course work enabling professional educators to achieve an "M. A." degree classification in their teaching field.

CHAPTER 77
(H. B. 4846—By Delegates Long and D. Miller)

(Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated
section eight-e, relating to requiring state board of education to develop competency tests for all service personnel classification titles; establishing the classifications to be included in the same testing category; providing for the method, location and administration of such tests; designating the subject matter of such tests; addressing the utilization of such tests; providing for retaking such tests in certain instances; requiring county boards to schedule and a vocational center to administer such tests; permitting employees in certain instances to be excused from work with pay to take said competency tests; requiring a one day minimum of appropriate inservice training to be provided; and establishing the effective implementation date.

Be it enacted by the Legislature of West Virginia:

That article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be further amended by adding thereto a new section, designated section eight-e, to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8e. Competency testing for service personnel.

1 The state board of education shall develop and cause to be made available competency tests for all of the classification titles defined in section eight and listed in section eight-a of this article for service personnel. Each classification title defined and listed shall be considered a separate classification category of employment for service personnel and shall have a separate competency test, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment and shall have a single competency test. The cafeteria manager class title shall be included in the same classification category as cooks and shall have the same competency test. The executive secretary class title shall be included in the same classification category as secretaries and shall have the same competency test. The classification titles of chief mechanic, mechanic, and assistant mechanic shall be included in one classification title and shall have the same competency test.
The purpose of these tests shall be to provide county boards of education a uniform means of determining whether school service personnel employees who do not hold a classification title in a particular category of employment can meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests shall not be used to evaluate employees who hold the classification title in the category of their employment.

The competency test shall consist of an objective written and/or performance test: *Provided*, That applicants shall have the opportunity of taking the written test orally if requested. Oral tests shall be recorded mechanically and kept on file. Persons administering the oral test shall not know the applicant personally. The performance test for all classifications and categories other than Bus Operator shall be administered by a vocational school which serves the county board of education. A standard passing score shall be established by the state department of education for each test and shall be used by county boards of education. The subject matter of each competency test shall be commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test shall be designed in such a manner that achieving a passing grade will not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score shall conclusively demonstrate the qualification of an applicant for a classification title. Once an employee passes the competency test of a classification title, said applicant shall be fully qualified to fill vacancies in that classification category of employment as provided in subsection (b), section eight-b of this article and shall not be required to take the competency test again.

An applicant who fails to achieve a passing score shall be given other opportunities to pass the competency test when making application for another vacancy within the classification category.

Competency tests shall be administered to applicants
in a uniform manner under uniform testing conditions. County boards of education shall be responsible for scheduling competency tests and shall not utilize a competency test other than the test authorized by this section.

When scheduling of the competency test conflicts with the work schedule of a school employee who has applied for a vacancy, said employee must be excused from work to take said competency test without loss of pay.

A minimum of one day of appropriate inservice training shall be provided employees to assist them in preparing to take the competency tests.

Competency tests shall be utilized to determine the qualification of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee. Once an employee holds a classification title in a category of employment, that employee shall be deemed qualified for said classification title even though that employee no longer holds that classification title.

The requirements of this section shall not be construed to alter the definitions of class titles as provided in section eight of this article nor the procedure and requirements of subsection (b), section eight-b of this article.

The testing procedures of this section shall be implemented effective the first day of July, one thousand nine hundred ninety-one.
members of faculty and classified employee advisory councils; beginning such terms in July of even-numbered years; and changing required month of one quarterly meeting from May to July.

Be it enacted by the Legislature of West Virginia:

That sections two and four, article six, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.

§18B-6-2. Advisory councils of faculty.

§18B-6-2. Advisory councils of classified employees.

§18B-62. Advisory councils of faculty.

1 Effective the first day of July, one thousand nine hundred eighty-nine, each governing board shall be assisted by an advisory council of faculty.

2 During the month of April of each year, each president or other administrative head of a state institution of higher education, including Potomac State College of West Virginia University and West Virginia University at Parkersburg, at the direction of the councils and in accordance with procedures established by the councils, shall convene a meeting or otherwise institute a balloting process to elect one faculty to serve on the appropriate governing board's advisory council of faculty, which shall consist of one faculty, so elected, from each such institution under the appropriate governing board. Terms of the members of each council shall be for two years and shall begin on the first day of July of each even-numbered year, and members of each advisory council shall be eligible to succeed themselves.

The advisory councils of faculty shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting each council shall elect a chairman, who shall be by virtue of the office a voting member of the appropriate governing board. No member may vote by proxy at such election. In the event of a tie in the last vote taken for
such election, a member authorized by the council shall
select the chairman by lot from the names of those
persons tied. Immediately following the election of a
chairman, each council shall elect, in the manner
prescribed by this section for the election of a chairman,
a member of that council to preside over meetings of the
council in the chairman's absence. Should the chairman
vacate the position, the council shall meet and elect a
new chairman to fill the unexpired term within thirty
days following such vacancy.

Each advisory council of faculty, through its chairman
and in any other appropriate manner, shall consult and
advise its governing board in matters of higher educa-
tion in which the faculty members may have an interest.

Members of each advisory council shall serve without
compensation, but shall be entitled to reimbursement
for actual and necessary expenses incurred in the
performance of their official duties from funds allocated
to the state institution of higher education served.

Each governing board shall furnish secretarial
services to its advisory council of faculty, and each
advisory council shall cause to be prepared minutes of
its meetings, which minutes shall be available, upon
request, to any faculty member of a state institution of
higher education represented on the council. Such
minutes shall be forwarded to the advisory council of
faculty serving the other governing board.

§18B-6-4. Advisory councils of classified employees.

Effective the first day of July, one thousand nine
hundred eighty-nine, each governing board shall be
assisted by an advisory council of classified employees.

During the month of April of each year, each pres-
on the appropriate governing board's advisory council of
classified employees, which shall consist of one classified
employee, so elected, from each such institution under
the appropriate governing board. Terms of the members
of such councils shall be for two years and shall begin
on the first day of July of each even-numbered year, and
members of the advisory councils shall be eligible to
succeed themselves. For the purpose of this section the
term "institution of higher education" includes the
facilities and staff supervised by the senior administra-
tor employed by the governing boards, who shall be
deemed a part of the state college system, and the West
Virginia network for telecomputing, who shall be
deemed a part of the state university system.

Each advisory council of classified employees shall
meet at least once each quarter. One of the quarterly
meetings shall be during the month of July, at which
meeting each council shall elect a chairman, who shall
be by virtue of the office a voting member of the
appropriate governing board: Provided, That the board
of directors' advisory council for classified employees'
chairman shall not be a member of the staff supervised
by the central administrative official. No member may
vote by proxy at such election. In the event of a tie in
the last vote taken for such election, a member autho-
rized by the council shall select the chairman by lot
from the names of those persons tied. Immediately
following the election of a chairman, each council shall
elect, in the manner prescribed by this section for the
election of a chairman, a member of the council to
preside over meetings of the council in the chairman's
absence. Should the chairman vacate the position, the
council shall meet and elect a new chairman to fill the
unexpired term within thirty days following such
vacancy.

Each advisory council of classified employees, through
its chairman and in any other appropriate manner, shall
consult and advise its governing board in matters of
higher education in which the classified employees may
have an interest.

Members of each advisory council shall serve without
compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

Each governing board shall furnish secretarial services to its advisory council of classified employees, and each advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any classified employee of a state institution of higher education represented on the council. Such minutes shall be forwarded to the advisory council of classified employees serving the other governing board.

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CHAPTER 79

(Com. Sub. for H. B. 2305—By Mr. Speaker, Mr. Chambers)

[Passed February 12, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article four-a of said chapter; to amend and reenact sections four and seven, article five of said chapter; to amend and reenact section three, article ten of said chapter; and to amend and reenact section one, article two, chapter fifty-one of said code, relating to the election of circuit judges generally; providing for numbered divisions within multi-judge circuits for election purposes only beginning with the primary and general elections to be held in the year one thousand nine hundred ninety-two; providing for the filing of a certificate of candidacy in the numbered division of the circuit for which the candidate seeks office; establishing the method whereby vacancies in the office of certain state officials, United States senators and circuit judges are filled; and providing for the nomination or election of the candidate for circuit judge receiving the highest number of votes within a division.
Be it enacted by the Legislature of West Virginia:

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

Chapter 3. Elections.
51. Courts and Their Officers.

CHAPTER 3. ELECTIONS.

4A. Electronic Voting Systems.
5. Primary Elections and Nominating Procedures.
10. Filling Vacancies.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-17. Election of circuit judges; county and district officers; magistrates.

1 There shall be elected, at the general election to be held in the year one thousand nine hundred ninety-two, and in every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to but one judge, and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to two or more circuit judges; and at the general election to be held in the year one thousand nine hundred ninety-two, and in every fourth year thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors prescribed by law for the county, and the number of magistrates prescribed by law for the county; and at the general election to be held in the year one thousand nine hundred ninety, and in every second year thereafter, a commissioner of the county commission for each county; and at the general election to be held in the year one thousand nine hundred ninety-two, and in every sixth year thereafter, a clerk of the county commission and a clerk of the circuit court for each county.
ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.

When the ballot labels are printed and delivered to the clerk of the county commission, he shall place them in the vote recording devices in such manner as will most nearly conform to the arrangement prescribed for paper ballots, and as will clearly indicate the party designation or emblem of each candidate. Each column, row or page containing the names of the office and candidates for such office shall be so arranged as to clearly indicate the office for which the candidate is running. The names of the candidates for each office indicated shall be placed on the ballot label. The ballot label and the arrangement of the ballot shall conform as nearly as practicable to the plan herein given:

<table>
<thead>
<tr>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
</tr>
</thead>
<tbody>
<tr>
<td>For House of Delegates</td>
<td>For House of Delegates</td>
</tr>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>70 ←</td>
<td>→ 69</td>
</tr>
<tr>
<td>72 ←</td>
<td>→ 71</td>
</tr>
<tr>
<td>74 ←</td>
<td>→ 73</td>
</tr>
<tr>
<td>76 ←</td>
<td>→ 75</td>
</tr>
</tbody>
</table>

The secretary of state shall assign a uniform number applicable to all counties using electronic voting for all straight party tickets and for all candidates running for offices to be voted upon by all of the voters of the state. The number so designated by the secretary of state shall be used by all counties using electronic voting systems irrespective of the fact that in one or more such counties...

*Clerk's Note: §3-4A-12 was also amended by H. B. 4770 (Chapter 80), which passed subsequent to this act.*
the number or numbers so designated may result in
other than strict sequential ballot arrangement. After
taking into account the numbers so assigned by the
secretary of state to straight party tickets and all
candidates for offices to be voted upon by all the voters
of the state, the clerk of the circuit court shall appoint
a time at which all candidates whose ballot positions are
to be determined by drawing by lot are to appear before
the clerk for such drawing. Candidates whose ballot
positions are to be determined by drawing by lot are
those candidates for an office for which the voters will
elect more than one person to represent the electoral
districts, including, but not limited to, House of
Delegates contests in multi-delegate districts, contests
for the office of county board of education, magistrate
and delegate to a political party national convention.
The clerk shall give due notice of such time to each
candidate by United States mail, directed to the address
given by the candidate in his announcement of candi­
dacy. It shall be the duty of the secretary of state to
provide each circuit clerk with a list of names and
addresses of candidates running for office in such clerk's
county who have filed their announcement of candidacy
with the secretary of state, and who are candidates
whose ballot positions are to be determined by drawing
by lot. At the time appointed, all such candidates whose
ballot positions are to be determined by lot shall
assemble in the office of such clerk and such candidates
shall then proceed to draw by lot to determine where
their names shall appear on the ballots or ballot labels.
The number so drawn by each such candidate shall
determine where his or her name shall appear on the
ballots or ballot labels. In the event any candidate or
candidates fail to appear at the time appointed, the clerk
shall draw for such absent candidate or candidates in
the presence of those candidates assembled, if any, and
the number so drawn by the clerk shall determine
where the name of any absent candidate or candidates
shall appear on the ballots or ballot labels. The circuit
clerk shall record the number drawn by each candidate
and his name in an appropriate book. The ballot
commissioners shall proceed to have the ballot labels
printed according to the provisions of this article. After receiving the printed ballot labels, the clerk of the circuit court shall ascertain their accuracy and the clerk of the county commission shall proceed to have the ballot labels placed in the vote recording devices. The clerk of the county commission shall then seal the vote recording devices so as to prevent tampering with ballot labels, and enter in an appropriate book, opposite the number of each precinct, the identifying or distinguishing number of the specific vote recording device or devices to be used in that precinct.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-4. Nomination of candidates in primary elections.

§3-5-7. Filing announcements of candidates; re-requirements; when section applicable.

§3-5-4. Nomination of candidates in primary elections.

1 At each primary election, the candidate or candidates of each political party for all offices to be filled at the ensuing general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each delegate district, of each judicial circuit of West Virginia, of each county, and of each magisterial district in the state shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election.

2 In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office. Where only one candidate of a political party for any office in a political division, including party committee-men and delegates to national conventions, is to be chosen, or where a judicial circuit has two or more circuit judges and one circuit judge is to be chosen for each numbered division within the circuit, the candidate receiving the highest number of votes therefor in the primary election shall be declared the party nominee for such office. Where two or more such candidates are to be chosen in the primary election, the candidates constituting the proper number to be so chosen who shall receive the highest number of votes cast in the
political division in which they are candidates shall be declared the party nominees and choices for such offices, except that: (1) Candidates for the office of commissioner of the county commission shall be nominated and elected in accordance with the provisions of section ten, article nine of the Constitution of the state of West Virginia; (2) members of county boards of education shall be elected at primary elections in accordance with the provisions of sections five and six of this article; (3) candidates for the House of Delegates shall be nominated and elected in accordance with the residence restrictions provided in section two, article two, chapter one of this code; and (4) in judicial circuits having numbered divisions, each numbered division shall be tallied separately and the candidate in each division receiving a plurality of the votes cast shall be declared the party nominee for the office in that numbered division.

In case of tie votes between candidates for party nominations or elections in primary elections, the choice of the political party shall be determined by lot by the executive committee of the party for the political division in which such persons are candidates.

§3-5-7. Filing announcements of candidacies; requirements; when section applicable.

Any person who is eligible to hold and seeks to hold an office (including that of member of any political party executive committee) shall file with the secretary of state, if it be an office to be filled by the voters of more than one county, or with the clerk of the circuit court, if it be for an office to be filled by the voters of a county or subdivision less than a county, a certificate declaring himself a candidate for the nomination for such office, which certificate shall be in form or effect as follows:

I, ______________________, hereby certify that I am a candidate for the nomination for the office of ______________ to represent the ______________ Party, and desire my name printed on the official ballot of said party to be voted at the primary election to be
16 held on the ____ day of ____________ , 19____:
17 that I am a legally qualified voter of the County of
18 ____________, State of West Virginia; that my
19 residence is number ____ of ____________
20 Street in the City (or Town) of ____________ in
21 ____________ County in said State; that I am
22 eligible to hold the said office; that I am a member of
23 and affiliated with said political party; that I am a
24 candidate for said office in good faith.
25
26 Candidate
27
28 Signed and acknowledged before me this ____ _
29 day of ____________ , 19____.
30
31 Signature and official title of
32 person before whom signed.
33
34 Any candidate for circuit judge in a judicial circuit
35 containing numbered divisions shall state in the
36 certificate the numbered division in the judicial circuit
37 for which the candidate seeks nomination. No person
38 shall be a candidate for circuit judge in more than one
39 such numbered division.
40
41 Any candidate for delegate to the national convention
42 of any political party shall provide, on a form prescribed
43 by the secretary of state, the information required in the
44 certificate hereinbefore described and shall also provide
45 the name of the person he prefers as the presidential
46 nominee of his party upon the first convention ballot, or
47 if he has no preference, a statement that he is uncom-
48 mitted: Provided, That any candidate for delegate may
49 change his statement of presidential preference by
50 notifying the secretary of state by registered letter, at
51 least seventy-seven days prior to the day fixed for the
52 primary election.
53
54 Such announcement shall be signed and acknowl-
55 edged by the candidate before some officer qualified to
56 administer oaths, who shall certify the same. Any person
57 who knowingly provides false information on said
58 certificate shall be guilty of an offense and shall be
punished as set forth in section twenty-three, article nine of this chapter.

Such certificate shall be filed with the secretary of state or the clerk of the circuit court, as the case may be, not earlier than the second Monday in January next preceding the primary election day, and not later than the first Saturday of February next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked before that hour.

The provisions of this section shall apply to the primary election held in the year one thousand nine hundred ninety and every primary election held thereafter.

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, United States senators and judges.

Any vacancy occurring in the office of secretary of state, auditor, treasurer, attorney general, commissioner of agriculture, United States senator, judge of the supreme court of appeals, or in any office created or made elective, to be filled by the voters of the entire state, or judge of a circuit court, shall be filled by the governor of the state by appointment. If the unexpired term of a judge of the supreme court of appeals, or a judge of the circuit court, be for less than two years; or if the unexpired term of any other office named in this section be for a period of less than two years and six months, the appointment to fill the vacancy shall be for the unexpired term. If the unexpired term of any office be for a longer period than above specified, the appointment shall be until a successor to the office has timely filed a certificate of candidacy, has been nominated at the primary election next following such timely filing and has thereafter been elected and qualified to fill the unexpired term. Proclamation of any election to fill an unexpired term shall be made by the governor of the state, and, in the case of an office to be filled by the voters of the entire state, shall be published prior to such election as a Class II-0 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 each county of the state.
If the election be to fill a vacancy in the office of judge
of a circuit court, the proclamation shall be published
prior to such election as a Class II-0 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 each county in the judicial
circuit.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative
findings and declarations; elections; terms of
court.

(a) The state shall be divided into the following
judicial circuits with the following number of judges:
The counties of Brooke, Hancock and Ohio shall
constitute the first circuit and shall have four judges;
the counties of Marshall, Tyler and Wetzel shall
constitute the second circuit and shall have two judges;
the counties of Doddridge, Pleasants and Ritchie shall
constitute the third circuit and shall have one judge; the
counties of Wood and Wirt shall constitute the fourth
circuit and shall have three judges; the counties of
Calhoun, Jackson and Roane shall constitute the fifth
circuit and shall have one judge; the county of Cabell
shall constitute the sixth circuit and shall have four
judges; the county of Logan shall constitute the seventh
circuit and shall have two judges; the county of
McDowell shall constitute the eighth circuit and shall
have two judges; the county of Mercer shall constitute
the ninth circuit and shall have two judges; the county
of Raleigh shall constitute the tenth circuit and shall
have three judges; the counties of Greenbrier, Monroe,
Pocahontas and Summers shall constitute the eleventh
circuit and shall have two judges; the county of Fayette
shall constitute the twelfth circuit and shall have two
judges; the county of Kanawha shall constitute the
thirteenth circuit and shall have seven judges; the
counties of Braxton, Clay, Gilmer and Webster shall
constitute the fourteenth circuit and shall have two 
judges; the county of Harrison shall constitute the 
fifteenth circuit and shall have two judges; the county 
of Marion shall constitute the sixteenth circuit and shall 
have two judges; the county of Monongalia shall 
constitute the seventeenth circuit and shall have two 
judges; the county of Preston shall constitute the 
eighteenth circuit and shall have one judge; the counties 
of Barbour and Taylor shall constitute the nineteenth 
circuit and shall have one judge; the county of Randolph 
shall constitute the twentieth circuit and shall have one 
judge; the counties of Grant, Mineral and Tucker shall 
constitute the twenty-first circuit and shall have two 
judges; the counties of Hampshire, Hardy and Pendleton 
shall constitute the twenty-second circuit and shall have 
one judge; the counties of Berkeley, Jefferson and 
Morgan shall constitute the twenty-third circuit and 
shall have one judge; the county of Wayne shall 
constitute the twenty-fourth circuit and shall have one 
judge; the counties of Lincoln and Boone shall constitute 
the twenty-fifth circuit and shall have two judges; the 
counties of Lewis and Upshur shall constitute the 
twenty-sixth circuit and shall have one judge; the county 
of Wyoming shall constitute the twenty-seventh circuit 
and shall have one judge; the county of Nicholas shall 
constitute the twenty-eighth circuit and shall have one 
judge; the counties of Mason and Putnam shall consti-
tute the twenty-ninth circuit and shall have two judges; 
the county of Mingo shall constitute the thirtieth circuit 
and shall have one judge; and the counties of Berkeley, 
Jefferson and Morgan shall constitute the thirty-first 
circuit and shall have one judge.

(b) The terms of office of all circuit court judges shall 
be for eight years, the first commencing on the first day 
of January, one thousand nine hundred eighty-five, and 
ending on the thirty-first day of December, one thousand 
nine hundred ninety-two. Subsequent terms of said 
judges shall be for eight years.

(c) Beginning with the primary and general elections 
to be conducted in the year one thousand nine hundred 
ninety-two, in all judicial circuits having two or more
judges there shall be, for election purposes, numbered
divisions corresponding to the number of circuit judges
in each circuit. Each judge shall be elected at large from
the entire circuit. 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 circuit. The candidate receiving the
highest number of the votes cast within a numbered
division shall be nominated or elected, as the case may
be.

CHAPTER 80
(Com. Sub. for H. B. 4770—By Delegates Merow and Buchanan)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, nine, ten, ten-
a, twelve, thirteen, fifteen, sixteen, seventeen, nineteen,
nineteen-a, twenty, twenty-one, twenty-two, twenty-four
and twenty-five, article four-a, chapter three 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 eleven-
a, all relating to electronic voting systems; updating
terminology to allow for systems by which votes are
recorded by means of marking with electronically
sensible ink or pencil; setting forth the method by which
straight party tickets are to be counted, consistent with
the counting in other voting systems; clarifying that a
voter in primary elections may vote for candidates of a
party for which he or she is legally entitled to vote;
providing that the clerk of the county commission is the
custodian of the tabulating equipment; prescribing the
form for ballots upon which votes may be recorded by
means of marking with electronically sensible ink or
pencil; removing certain candidates whose ballot
positions are determined by drawing by lot; and
providing for criminal penalties upon violation of
certain provisions.
Be it enacted by the Legislature of West Virginia:

That sections two, nine, ten, ten-a, twelve, thirteen, fifteen, sixteen, seventeen, nineteen, nineteen-a, twenty, twenty-one, twenty-two, twenty-four and twenty-five, article four-a, chapter three 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 eleven-a, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-2. Definitions.
§3-4A-9. Minimum requirements of electronic voting systems.
§3-4A-10. County clerk to be custodian of vote re-recording devices and tabulating equipment; duties.
§3-4A-10a. Proportional distribution of vote recording devices.
§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.
§3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.
§3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.
§3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.
§3-4A-16. Delivery of vote recording devices; time, arrangement for voting.
§3-4A-17. Check of vote recording devices before use; corrections; reserve vote recording devices.
§3-4A-19. Conducting electronic voting system elections generally; duties of election officers.
§3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without such signatures.
§3-4A-20. "Independent" voting in primary elections.
§3-4A-21. Absent voter ballots; issuance, processing and tabulation.
§3-4A-22. Assistance to illiterate and disabled voters.
§3-4A-25. Closing polls.

§3-4A-2. Definitions.

1. As used in this article, unless otherwise specified:
2. (a) "Automatic tabulating equipment" means all
apparatus necessary to electronically count votes
recorded on ballots and tabulate the results;

(b) “Ballot” means a tabulating card or paper on
which votes may be recorded by means of perforating
or marking with electronically sensible ink or pencil;

(c) “Ballot labels” means the cards, papers, booklet,
pages or other material showing the names of offices
and candidates and the statements of measures to be
voted on, which are placed on the vote recording device
used for recording votes by means of perforating;

(d) “Central counting center” means a facility
equipped with suitable and necessary automatic tabulat-
ing equipment, selected by the county commission, for
the electronic counting of votes recorded on ballots;

(e) “Electronic voting system” is a means of conduct-
ing an election whereby votes are recorded on ballots by
means of an electronically sensible marking ink or by
perforating, and such votes are subsequently counted by
automatic tabulating equipment at the central counting
center;

(f) “Program deck” means the actual punch card deck
or decks, or a computer program disk, diskette, tape or
other programming media, containing the program for
counting and tabulating the votes, including the
“application program deck”;

(g) “Application program deck” means the punch
card deck or equivalent capacity in other program
medias as provided, containing specific options used and
necessary to modify the program of general application,
to conduct and tabulate a specific election according to
applicable law;

(h) “Standard validation test deck” means a group of
ballots wherein all voting possibilities which can occur
in an election are represented; and

(i) “Vote recording device” means equipment in which
ballot labels and ballots are placed to allow a voter to
record his vote by perforating.
§3-4A-9. Minimum requirements of electronic voting systems.

An electronic voting system of particular make and design shall not be approved by the state election commission or be purchased, leased or used, by any county commission unless it shall fulfill the following requirements:

1. It shall secure or ensure the voter absolute secrecy in the act of voting, or, at the voter's election, shall provide for open voting;

2. It shall be so constructed that no person except in instances of open voting, as herein provided for, can see or know for whom any voter has voted or is voting;

3. It shall permit each voter to vote at any election for all persons and offices for whom and which he is lawfully entitled to vote, whether or not the name of any such person appears on a ballot or ballot label as a candidate; and it shall permit each voter to vote for as many persons for an office as he is lawfully entitled to vote for; and to vote for or against any question upon which he is lawfully entitled to vote. The automatic tabulating equipment used in such electronic voting systems shall reject choices recorded on any ballot if the number of such choices exceeds the number to which a voter is entitled;

4. It shall permit each voter to deposit, write in, or affix upon a ballot, card or envelope to be provided for that purpose, ballots containing the names of persons for whom he desires to vote whose names do not appear upon the ballots or ballot labels;

5. It shall permit each voter to change his vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his ballot is deposited in the ballot box;

6. It shall contain a program deck consisting of cards that are sequentially numbered, or consisting of a computer program disk, diskette, tape or other programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program
instructions by unauthorized persons, and capable of tabulating all votes cast in each election;

(7) It shall contain two standard validation test decks approved as to form and testing capabilities by the state election commission;

(8) It shall correctly record and count accurately all votes cast for each candidate and for and against each question appearing upon the ballots or ballot labels;

(9) It shall permit each voter at any election other than primary elections, by one mark or punch to vote a straight party ticket, as provided in section five, article six of this chapter.

(10) It shall permit each voter in primary elections to vote only for the candidates of the party for which he or she is legally permitted to vote, and preclude him from voting for any candidate seeking nomination by any other political party, permit him to vote for the candidates, if any, for nonpartisan nomination or election, and permit him to vote on public questions;

(11) It shall, where applicable, be provided with means for sealing the vote recording device to prevent its use and to prevent tampering with ballot labels, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;

(12) It shall have the capacity to contain the names of candidates constituting the tickets of at least nine political parties, and to accommodate the wording of at least fifteen questions;

(13) Where vote recording devices are used, they shall:

(A) Be durably constructed of material of good quality and in a workmanlike manner and in a form which shall make it safely transportable;

(B) Be so constructed with frames for the placing of ballot labels and with suitable means for the protection
of such labels, that the labels on which are printed the
names of candidates and their respective parties, titles
of offices, and wording of questions shall be so reason-
ably protected from mutilation, disfigurement or
disarrangement;

\[\text{(C) Bear a number that will identify it or distinguish it from any other machine;}\]

\[\text{(D) Be so constructed that a voter may easily learn the method of operating it and may expeditiously cast his vote for all candidates of his choice, and upon any public question; and }\]

\[\text{(E) Be accompanied by a mechanically operated instruction model which shall show the arrangement of ballot labels, party columns or rows, and questions.}\]

§3-4A-10. County clerk to be custodian of vote recording devices and tabulating equipment; duties.

When an electronic voting system is acquired by any county commission, the vote recording devices, where applicable, and the tabulating equipment shall be immediately placed in the custody of the county clerk, and shall remain in his or her custody at all times except when in use at an election or when in custody of a court or court officers during contest proceedings. The clerk shall see that the vote recording devices and the tabulating equipment are properly protected and preserved from damage or unnecessary deterioration, and shall not permit any unauthorized person to tamper with them. The clerk shall also be charged with the duty of keeping the vote recording devices and tabulating equipment in repair and of preparing the same for voting.

§3-4A-10a. Proportional distribution of vote recording devices.

Where vote recording devices are used, the county commission of each county shall, upon the close of registration, review the total number of registered voters and the number of registered voters of each party in each precinct. Prior to each election, the commission shall determine the number of voting devices needed to
accommodate voters without long delays and shall assign an appropriate number to each precinct. For the purposes of the primary election, the commission shall assign the number of vote recording devices in each precinct to be prepared for each party based as nearly as practicable on the proportion of registered voters of each party to the total. Provided, That a minimum of one vote recording device per party be provided, except for "independent" voters, which shall be determined under section twenty of this article.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed for use in elections.

(b) (1) The heading of the ballot, the arrangement of offices in columns, the spaces for marking votes, the printing of offices, instructions and candidates names shall conform as nearly as possible to that prescribed in this chapter for paper ballots, except that the secretary of state may prescribe necessary modifications to accommodate the tabulating system. Nonpartisan elections for board of education and any question to be voted upon shall be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election, and such separate section shall constitute a separate ballot wherever a separate ballot is required under the provisions of this chapter.

(2) Both the face and the reverse side of the ballot may contain the names of candidates, only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(3) The arrangement of candidates within each office shall be determined in the same manner as for other
electronic voting systems, as prescribed in this chapter. On the general election ballot only, lines for entering write-in votes shall be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected. The words "WRITE-IN, IF ANY" shall be printed directly under each line for write-ins. Such lines shall be opposite a position to mark the vote. Write-in votes which appear on the ballot in places other than the lines provided for write-ins shall not be counted, but any name entered on a line for a write-in vote shall be counted in accordance with the rules for counting write-ins in a general election in other voting systems.

(c) The ballot shall be printed in black ink on paper suitable for automatic tabulation and in the color specified by the secretary of state, and shall contain a perforated stub at the top or bottom of the ballot which shall be numbered sequentially in the same manner as provided in this article for ballots upon which votes are recorded by means of perforating. The number of ballots printed and the packaging of ballots for the precincts shall conform to the requirements for paper ballots as provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

*§3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.

(a) When the ballot labels are printed and delivered to the clerk of the county commission of a county using vote recording devices, he shall place them in the vote recording devices in such manner as will most nearly conform to the arrangement prescribed for paper

*Clerk's Note: §3-4A-12 was also amended by H. B. 2305 (Chapter 79), which passed prior to this act.
ballots, and as will clearly indicate the party designation or emblem of each candidate. Each column, row or page containing the names of the office and candidates for such office shall be so arranged as to clearly indicate the office for which the candidate is running. The names of the candidates for each office indicated shall be placed on the ballot label. The ballot label and the arrangement of the ballot shall conform as nearly as practicable to the plan herein given:

<table>
<thead>
<tr>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
</tr>
</thead>
<tbody>
<tr>
<td>For House of Delegates</td>
<td>For House of Delegates</td>
</tr>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td>70 ←</td>
<td>→ 69</td>
</tr>
<tr>
<td>72 ←</td>
<td>→ 71</td>
</tr>
<tr>
<td>74 ←</td>
<td>→ 73</td>
</tr>
<tr>
<td>76 ←</td>
<td>→ 75</td>
</tr>
</tbody>
</table>

(b) The secretary of state shall assign a uniform number applicable to all counties using electronic voting for all straight party tickets and for all candidates running for offices to be voted upon by all of the voters of the state. The number so designated by the secretary of state shall be used by all counties using electronic voting systems irrespective of the fact that in one or more such counties the number or numbers so designated may result in other than strict sequential ballot arrangement.

(c) After taking into account the numbers so assigned by the secretary of state to straight party tickets and all candidates for offices to be voted upon by all the voters of the state, the clerk of the circuit court shall appoint a time at which all candidates whose ballot positions are to be determined by drawing by lot are to appear before the clerk for such drawing. Candidates whose ballot positions are to be determined by drawing by lot are those candidates for an office for which the voters will elect more than one person to represent the electoral districts, including, but not limited to, House
of Delegates contests in multi-delegate districts, contests
for the office of county board of education, magistrate
and delegate to a political party national convention.
The clerk shall give due notice of such time to each
candidate by United States mail, directed to the address
given by the candidate in his announcement of
candidacy.

(d) It shall be the duty of the secretary of state to
provide each circuit clerk with a list of names and
addresses of candidates running for office in such clerk's
county who have filed their announcement of candidacy
with the secretary of state, and who are candidates
whose ballot positions are to be determined by drawing
by lot. At the time appointed, all such candidates whose
ballot positions are to be determined by lot shall
assemble in the office of such clerk and such candidates
shall then proceed to draw by lot to determine where
their names shall appear on the ballots or ballot labels.
The number so drawn by each such candidate shall
determine where his or her name shall appear on the
ballots or ballot labels. In the event any candidate or
candidates fail to appear at the time appointed, the clerk
shall draw for such absent candidate or candidates in
the presence of those candidates assembled, if any, and
the number so drawn by the clerk shall determine
where the name of any absent candidate or candidates
shall appear on the ballots or ballot labels. The circuit
clerk shall record the number drawn by each candidate
and his name in an appropriate book. The ballot
commissioners shall proceed to have the ballots or ballot
labels printed according to the provisions of this article.
After receiving the printed ballots or ballot labels, the
clerk of the circuit court shall ascertain their accuracy
and the clerk of the county commission shall, in counties
utilizing vote recording devices, proceed to have the
ballot labels placed in the vote recording devices. The
clerk of the county commission shall then seal the vote
recording devices so as to prevent tampering with ballot
labels, and enter in an appropriate book, opposite the
number of each precinct, the identifying or distinguishing number of the specific vote recording device or
devices to be used in that precinct.
§3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.

When the clerk of the county commission has completed the preparation of the ballots and vote recording devices as provided in sections eleven, eleven-a and twelve of this article and as provided in section twenty-one, article one of this chapter, and not later than seven days before the day of the election, he or she shall notify the members of the county commission and the ballot commissioners that the ballots and devices, where applicable, are ready for use. Thereupon the members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place wherein the vote recording devices, where applicable, and ballots are stored, not later than five days before the day of the election, and shall inspect the devices and the ballots to determine whether the requirements of this article have been met. Notice of the place and time of such inspection shall be published, no less than three days prior thereto, as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. Any candidate and one representative of each political party on the ballot may be present during such examination. If the devices, where applicable, and ballots are found to be in proper order, the members of the county commission and the ballot commissioners shall, where applicable, endorse their approval in the book in which the clerk entered the numbers of the devices opposite the numbers of the precincts. The vote recording devices and the ballots shall then be secured in double lock rooms. The county clerk and the president or president pro tempore of the county commission shall each have a key. The rooms shall be unlocked only in their presence and only for the removal of the devices, where applicable, and the ballots for transportation to the polls. Upon such removal of the devices and ballots,
the county clerk and president or president pro tempore
of the county commission shall certify in writing signed
by them that the devices, where applicable, and
packages of ballots were found to be sealed when
removed for transportation to the polls.

Not later than one day before the election, the election
commissioner of each precinct who shall have been
previously designated by the ballot commissioners, shall
attend at the office of the clerks of the circuit court and
county commission of such county to receive the
necessary election records, books and supplies required
by law. Such election commissioners shall receive the
per diem mileage rate prescribed by law for this service.
Such election commissioners shall give the ballot
commissioners a sequentially numbered written receipt,
on a printed form, provided by the clerk of the county
commission, for such records, books and supplies. Such
receipt shall be prepared in duplicate. One copy of the
receipt shall remain with the clerk of the county
commission and one copy shall be delivered to the
president or president pro tempore of the county
commission.

§3-4A-15. Instructions and help to voters; vote recording
device models; facsimile diagrams; sample
ballots; legal ballot advertisements.

(a) For the instruction of the voters on any election
day in counties utilizing an electronic voting system
where votes are to be recorded by means of perforating,
there shall be provided for each polling place one
instruction model for each vote recording device. Each
such instruction model shall be constructed so as to
provide a replica of a vote recording device, and shall
contain the arrangement of the ballot labels, party
columns or rows, office columns or rows, and questions.
Fictitious names shall be inserted in the ballot labels of
the models. Such models shall be located on the election
officers' tables or in some other place in which the voter
must pass to reach the vote recording device. Each
voter, upon request, before voting, shall be offered
instruction by the election officers in the operation of the
vote recording device by use of the instruction model,
and each voter shall be given ample opportunity to 
operate the model himself.

(b) The ballot commissioners shall also provide 
facsimile ballots or ballot labels, as may be appropriate, 
at least two of which, or complete sets of which, shall 
be posted on the walls of each polling place. The 
facsimile diagrams shall be exact diagrams of the 
balloons or ballot labels or paper ballots to the end that 
the voter may become familiar with the location of the 
parties, offices, candidates and questions as they appear 
on the ballot to be used in his precinct.

(c) The ballot commissioners may, with the consent of 
the county commission, or the county commission may, 
prepare and mail to each qualified voter at his address 
as shown on the registration books a facsimile sample 
of the ballot or ballot labels for his precinct.

(d) In counties where an electronic voting system has 
been adopted, the legal ballot advertisements required 
by articles five and six of this chapter, shall consist of 
a facsimile of the ballot or ballot labels with the names 
of the candidates and the offices for which they are 
running shown in their proper positions.

§3-4A-16. Delivery of vote recording devices; time, 
arrangement for voting.

The clerk of the county commission shall deliver or 
cause to be delivered each vote recording device, where 
applicable, and the package of ballots to the polling 
place where they are to be employed. Such delivery shall 
be made not less than one hour prior to the opening of 
The polls and shall be made in the presence of the 
precinct election commissioners. At the time of the 
delivery of such vote recording device, where applicable, 
and the ballots, the device shall be sealed in such a way 
to prevent its use prior to the opening of the polls and 
any tampering with the ballot labels and the ballots 
shall be packaged and sealed in such a way to prevent 
any tampering with the ballots. Immediately prior to 
the opening of the polls on election day, the sealed 
packages of ballots shall be opened, and the seal of the 
vote recording device shall be broken in the presence of
the precinct election commissioners, who shall certify in
writing signed by them to the clerk of the county
commission, that the devices, where applicable, and the
ballots have been delivered in their presence, that the
devices and packages of ballots were found to be sealed
upon such delivery, and that the seals have been broken
and the devices opened in their presence, as may be
appropriate. The election commissioners shall then
cause the vote recording device, where applicable, to be
arranged in the voting booth in such manner that the
front of the vote recording device on which the ballot
labels appear will not be visible, when the vote record-
ing device is being operated, to any person other than
the voter if the voter shall elect to close the curtain,
screen or hood to the voting booth.

§3-4A-17. Check of vote recording devices before use;
corrections; reserve vote recording devices.

In counties utilizing an electronic voting system where
votes are to be recorded by means of perforating before
permitting the first voter to vote, the election commis-
sioners shall examine the vote recording devices to
ascertain whether the ballot labels are arranged as
specified on the facsimile diagram furnished to the
precinct. If the ballot labels are arranged incorrectly,
the commissioners shall immediately notify the clerk of
the county commission of the foregoing facts in writing,
indicating the number of the device, and obtain from
such clerk a reserve vote recording device, and thereaf-
ther proceed to conduct the election. Any reserve vote
recording device so used shall be prepared for use by
the clerk or his duly appointed deputy and said reserve
vote recording device shall be prepared, inspected and
sealed, and delivered to the polling place wherein the
seal shall be broken and such device opened in the
presence of the precinct election commissioners who
shall certify in writing signed by them to the clerk of
the county commission, that the reserve vote recording
device was found to be sealed upon delivery to the
polling place, that the seal was broken and the device
opened in their presence at the polling place. The vote
recording device found to have been with incorrect
ballot labels shall be returned immediately to the custody of the clerk who shall then promptly cause such vote recording device to be repaired, prepared and resealed in order that it may be used as a reserve vote recording device if needed.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers.

1 (1) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than five minutes.

2 (2) In primary elections, before a voter is permitted to occupy the voting booth, the election commissioner representing the party to which the voter belongs shall direct the voter to the vote recording device or supply the voter with a ballot, as may be appropriate, which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated.

3 (3) The poll clerk shall issue to each voter when he signs the pollbook a card or ticket numbered to correspond to the number on the pollbook of such voter, and in the case of a primary election, indicating the party affiliation of such voter, which numbered card or ticket shall be presented to the election commissioner in charge of the voting booth.

4 (4) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths so that they will be in clear view of the election commissioners. Where applicable, they shall open the vote recording devices, place them in the voting booths, examine them to see that they have the correct ballots or ballot labels by comparing them with the sample ballots, and determine whether they are in proper working order. They shall open and check the ballots, supplies, records and forms, and post the sample ballots or ballot labels and instructions to voters. Upon ascertaining that all ballots, supplies, records and forms arrived intact, the election commissioners shall so certify in writing their
findings upon forms provided and collected by the clerk of the county commission over their signatures to the clerk of the county commission. Any discrepancies shall be so noted and reported immediately to the clerk of the county commission. The election commissioners shall then number in sequential order the ballot stub of each ballot in their possession and report in writing to the clerk of the county commission the number of ballots received. They shall issue such ballots in sequential order to each voter.

(5) Where applicable, each voter shall be instructed how to operate the vote recording device before he enters the voting booth.

(6) Any voter who shall spoil, deface or mutilate the ballot delivered to him, on returning the same to the poll clerks, shall receive another in place thereof. Every person who does not vote any ballot delivered to him shall, before leaving the election room, return such ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the pollbooks, at the time, and the word “spoiled” shall be written across the face of the ballot and it shall be placed in an envelope for spoiled ballots.

Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots during the election and the number of ballots remaining not voted. The election commissioners shall also ascertain from the pollbooks the number of persons who voted and shall report, in writing signed by them to the clerk of the county commission, any irregularities in the ballot boxes, the number of ballots cast, the number of ballots spoiled during the election and the number of ballots unused. All unused ballots shall at the same time be returned to the clerk of the county commission who shall count them and record the number. If there is no discrepancy, the unused ballots shall be destroyed forthwith, before a representative of each party on the ballot, by fire or otherwise, by the clerk of the county commission or a duly designated deputy clerk. If there is a discrepancy, the unused ballots shall be impounded and secured under double locks until the discrepancy is
resolved. The county clerk and the president or presi-
dent pro tempore of the county commission shall each
have a key. Upon resolution of the discrepancy, the
unused ballots shall forthwith, before a representative
of each party on the ballot, be destroyed by fire or
otherwise, by the clerk of the county commission or a
duly designated deputy clerk.

Each commissioner who is a member of an election
board which fails to account for every ballot delivered
to it shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than one
thousand dollars or confined in the county jail for not
more than one year, or both.

The board of ballot commissioners of each county, or
the chairman thereof, shall preserve the ballots that are
left over in their hands, after supplying the precincts as
provided, until the close of the polls on the day of
election, and such ballots shall then be destroyed by such
board, or the chairman thereof, by fire or otherwise.

(7) Where ballots are used, the voter, after he has
marked his ballot shall, before leaving the voting booth,
place the ballot inside the envelope provided for this
purpose, with the stub extending outside said envelope,
and return it to an election commissioner who shall
remove the stub and deposit the envelope with the ballot
inside in the ballot box. No ballot from which the stub
has been detached shall be accepted by the officer in
charge of the ballot box, but such ballot shall be marked
“spoiled” and placed with the spoiled ballots.

(8) The precinct election commissioners shall prepare
a report in quadruplicate of the number of voters who
have voted, as indicated by the pollbooks, and shall place
two copies of this report in the ballot box, which
thereupon shall be sealed with a paper seal signed by
the election commissioners so that no additional ballots
may be deposited or removed from the ballot box. Two
election commissioners of different political parties shall
forthwith deliver the ballot box to the clerk of the county
commission at the central counting center and receive
a signed numbered receipt therefor, which receipt shall
carefully set forth in detail any and all irregularities pertaining to the ballot boxes and noted by the precinct election officers.

The receipt shall be prepared in duplicate, a copy of which shall remain with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place shall be noted on the two remaining copies of the report, which shall be immediately mailed to the clerk of the county commission.

(9) The pollbooks, register of voters, unused ballots, spoiled ballots and other records and supplies shall be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

§3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without such signatures.

Every ballot utilized during the course of any electronic voting system election conducted under the provisions of this article shall provide two lines for the signatures of the poll clerks. Both of the signature lines shall be printed on a portion of the ballot where votes are not recorded by perforation or marking, but which portion is an actual part of the ballot deposited in the ballot box after the voter has perforated or marked his ballot and after the ballot stub has been removed.

Each of the two poll clerks shall sign his name on one of the designated lines provided on each ballot before any ballot is distributed to a voter. After a voter has signed the pollbook, as required in section nineteen of this article, the two poll clerks shall deliver a ballot to the voter, which ballot has been signed by each of the two poll clerks as provided herein.

In the course of an election contest, if it is established that a ballot does not contain the two signatures required by this section, such ballot shall be null, void and of no effect, and shall not be counted.


If at any primary elections, nonpartisan candidates
for office and public questions are submitted to the voters and on which candidates and questions persons registered as "independent" are entitled to vote, as provided in section eighteen, article two of this chapter, the election officers shall provide a vote recording device, where applicable, or the appropriate ballot to be marked by an electronically sensible pen or ink, so that such "independent" voters may vote only those portions of the ballot relating to the nonpartisan candidates and the public questions submitted, or provide a ballot containing only provision for voting for those candidates and/or upon those issues common to the ballots provided to all voters regardless of political party affiliation.

In counties utilizing electronic voting systems in which votes are recorded by perforating, if vote recording devices are not available for the "independent" voters, provision shall be made for sealing the partisan section or sections of the ballot or ballot labels on a vote recording device using temporary seals, thus permitting the independent voter to vote for the nonpartisan section or sections of the ballot or ballot labels. After the "independent" voter has voted, the temporary seals may be removed and the device may then be used by partisan voters.

§3-4A-21. Absent voter ballots; issuance, processing and tabulation.

Absentee voters shall cast their votes on absent voter ballots. If absentee voters shall be deemed eligible to vote in person at the office of the clerk of the circuit court, in accordance with the provisions of article three of this chapter, the clerk of the circuit court of each county shall provide a vote recording device or other means, as may be appropriate for votes recorded by electronically sensible ink or pencil, for the use of such absentee voters. For all absentee voters deemed eligible to vote an absent voter's ballot by mail, in accordance with the provisions of article three of this chapter, the clerk of the circuit court of each county shall prepare and issue an absent voter ballot packet consisting of the following:
(a) One official absent voter ballot;

(b) One punching tool for perforating or a device for marking by electronically sensible pen or ink, as may be appropriate;

(c) If a punching tool is to be utilized, one disposable styrofoam block to be placed behind the ballot card for voting purposes and to be discarded after use by the voter;

(d) One absent voter instruction ballot;

(e) One absent voter's ballot envelope No. 1, unsealed, which shall have no writing thereon and which shall be identical to the secrecy envelope used for placement of ballots at the polls; and

(f) One absent voter's ballot envelope No. 2, which envelope shall be marked with the proper precinct number and shall provide a place on its seal for the absent voter to affix his signature. Such envelope shall also otherwise contain the forms and instructions as provided in section five, article three of this chapter, relating to the absentee voting of paper ballots.

Upon receipt of an absent voter's ballot by mail, the voter shall mark the ballot with the punch tool or marking device, whichever is appropriate, and the voter may receive assistance in voting his absent voter's ballot in accordance with the provisions of section six, article three of this chapter.

After the voter has voted his absent voter's ballot, he shall (1) enclose the same in absent voter's ballot envelope No. 1, and seal that envelope, (2) enclose sealed absent voter's ballot envelope No. 1 in absent voter's ballot envelope No. 2, (3) complete and sign the forms, if any, on absent voter's ballot envelope No. 2 according to the instructions thereon, and (4) mail, postage prepaid, sealed absent voter's ballot envelope No. 2 to the clerk of the circuit court of the county in which he is registered to vote, unless the voter has appeared in person, in which event he shall hand deliver the sealed absent voter's ballot envelope No. 2 to the clerk.
53 Upon receipt of such sealed envelope, the circuit clerk
54 shall (1) enter onto the envelope such information as may
55 be required of him according to the instructions thereon;
56 (2) enter his challenge, if any, to the absent voter's
57 ballot; (3) enter the required information into a record
58 of persons making application for and voting an absent
59 voter's ballot by personal appearance or by mail (the
60 form of which record and information to be entered
61 therein shall be prescribed by the secretary of state);
62 and (4) place such sealed envelope in a secure location
63 in his office, there to remain until delivered to the
64 polling place in accordance with the provisions of this
65 article or, in case of a challenged ballot, to the county
66 commission sitting as a board of canvassers.
67
68 When absent voters' ballots have been delivered to the
69 election board of any precinct, the election commission-
70 ers shall, at the close of the polls, proceed to determine
71 the legality of such ballots as prescribed in article three
72 of this chapter. The commissioners shall then open all
73 of the absent voter's ballot envelopes No. 2 which contain
74 ballots not challenged and remove therefrom the absent
75 voter's ballot envelopes No. 1. These ballot envelopes No.
76 1 shall then be shuffled and intermingled. The election
77 commissioners and poll clerks, in the presence of each
78 other, shall next open all of the absent voter's ballot
79 envelopes No. 1 and remove the ballots therefrom. The
80 poll clerks shall then affix their signatures thereto as
81 provided in section nineteen-a of this article. The
82 commissioners shall then insert each ballot into a
83 secrecy envelope identical to the secrecy envelopes used
84 for the placement of ballots of voters who are voting in
85 person at the polls and shall deposit the ballot in the
86 ballot box.

§3-4A-22. Assistance to illiterate and disabled voters.

1 (a) Any duly registered voter, who requires assistance
2 to vote by reason of blindness, disability, advanced age
3 or inability to read and write, may be given assistance
4 by one of the following means:

5 (1) By a person of the voter's choice: Provided, That
6 such assistance may not be given by the voter's present
or former employer or agent of that employer or by an
do officer or agent of a labor union of which the voter is
a past or present member; or

(2) If no person of the voter's choice be present at the
polling place, the voter may request such assistance
from the poll clerks or ballot commissioners present at
the polling place, whereupon such assistance may be
given by any two of such election officers of opposite
political party affiliation to whom such voter shall
thereupon declare his or her choice of candidates and
his or her position on public questions appearing on the
ballot. Such election officers, in the presence of the voter
and in the presence of each other, shall thereupon cause
such voter's declared choices to be recorded on the ballot
or a vote recording device, as may be appropriate, as
votes.

(b) A person other than an election officer who assists
a voter in voting under the provisions of this section
shall sign a written oath or affirmation before assisting
such voter, stating that he or she will not override the
actual preference of the voter being assisted or mislead
the voter into voting for someone other than the
candidate of the voter's choice. Such person assisting the
voter shall also swear or affirm that he or she believes
that the voter is voting free of intimidation or manip-
ulation.


If the right of any person to vote be challenged in
accordance with the provisions of article one of this
chapter, relating to the challenging of voters, and a vote
recording device or ballot is used that tabulates the vote
as an individual vote, such person shall be permitted to
cast his vote by use of the vote recording device or ballot,
as may be appropriate. He shall be provided with a
challenged ballot and ballot envelopes for the insertion
of the ballot after voting. There shall be an inner
envelope marked with the precinct number for the
challenged ballot. There shall also be another envelope
for the inner envelope and the challenged voter stub,
which envelope shall provide a place for the challenged voter to affix his signature on the seal of such outer envelope.

After the county commission, as prescribed in article one of this chapter, has determined that the challenges are unfounded, the commissioners shall remove the outer envelopes. Without opening the inner envelope, the commissioners shall shuffle and intermingle such inner envelopes. The commissioners shall then open the inner envelopes, remove the ballots and add the votes to the previously counted totals.

§3-4A-25. Closing polls.

As soon as the polls have been closed and the last qualified voter has voted, no further voting on any ballot may be had and the vote recording devices utilized in counties with electronic voting systems where votes are recorded by perforating shall be sealed against further voting. All unused ballots shall be placed in a container for return to the clerk of the county commission.

CHAPTER 81
(S. B. 518—By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)

[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to implementing the 1987 amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; and expanding the definition of the term “acquiring agency”.

Be it enacted by the Legislature of West Virginia:

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

§54-3-1. Definitions.

As used in this article, the term:

(1) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", being Public Law 91-646, enacted by the Ninety-first Congress of the United States of America, and the 1987 amendments thereto known as Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 being Public Law 100-17 enacted by the One Hundredth Congress of the United States of America.

(2) "Acquiring agency" means the state of West Virginia or any department, agency or instrumentality thereof, or any county, municipality or other political subdivision thereof or any department, agency or instrumentality of two or more states or of two or more political subdivisions of a state or states, and any person carrying out a program or project with federal financial assistance which causes a person to be a displaced person within the intent and meaning of the federal act.

(3) "Person" means any individual, partnership, association or corporation.

CHAPTER 82
(H. B. 4735—By Delegate Farley)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a; and to amend and reenact section eleven, article three, chapter twenty-two-a of said code, all
relating to the use of special revenue funds by the commissioner of energy to administer the division of energy; providing that federal funds may not be expended contrary to federal law; providing that moneys in the special reclamation fund are reserved for certain purposes; requiring the commissioner to develop a long-range planning process; restricting the amount of moneys which the commissioner may use for certain purposes; increasing the fee per ton of clean coal mined and specifying when it shall be collected; and removing provisions regarding assessments when the fund goes below a certain amount.

Be it enacted by the Legislature of West Virginia:

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

Chapter
22. Energy.
22A. Mines and Minerals.

CHAPTER 22. ENERGY.

ARTICLE 1. TITLE; PURPOSES; DIVISION OF ENERGY.

§22-1-5a. Special revenue.

Except as herein exempted and notwithstanding any other provisions in this code to the contrary, the commissioner may, with the exception of the special reclamation fund established in section eleven, article three, chapter twenty-two-a of this code, expend, in accordance with the provisions of chapter five-a of this code, from special revenue accounts, and funds established pursuant to this chapter and chapters twenty-two-a and twenty-two-b of this code, amounts necessary to implement and administer the general powers, duties and responsibilities of the division of energy: Provided, That federal funds required by law to be expended for a specific purpose may not be expended for any purpose contrary to the laws, rules or regulations of the federal government.
CHAPTER 22A. MINES AND MINERALS.

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§22A-3-11. Performance bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

(a) After a surface-mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish bond, on a form to be prescribed and furnished by the commissioner, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The amount of the bond shall be one thousand dollars for each acre or fraction thereof. The bond shall cover (1) the entire permit area, or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface-mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the commissioner an additional bond or bonds to cover such increments in accordance with this section: Provided, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, he shall continue bonding in that manner for the term of the permit: Provided, however, That the minimum amount of bond furnished shall be ten thousand dollars.

(b) The period of liability for performance bond coverage shall commence with issuance of a permit and continue for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c) (1) The form of the performance bond shall be approved by the commissioner and may include, at the option of the operator, surety bonding, collateral
bonding (including cash and securities), establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners’ loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(2) The commissioner may approve an alternative bonding system if it will (A) reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time, and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The commissioner may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the commissioner the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure.
(e) It shall be unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of his obligations to the state for the reclamation of lands disturbed by him.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) All special reclamation taxes deposited by the commissioner with the treasurer or the state of West Virginia to the credit of the special reclamation fund prior to the effective date of this article shall be transferred to the special reclamation fund created by this section and shall be expended pursuant to the provisions of this subsection: Provided, That no taxes transferred into the special reclamation fund created by this section shall be subject to refund. The moneys accrued in the fund, including interest, are reserved solely and exclusively for the purposes set forth in this subsection. The fund shall be administered by the commissioner, and he is authorized to expend the moneys in the fund for the reclamation and rehabilitation of lands which were subjected to permitted surface-mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven, where the amount of the bond posted and forfeited on such land is less than the actual cost of reclamation. The commissioner shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term obligations of the assets in the fund of such magnitude that the solvency of the fund is jeopardized. The commissioner may use an amount, not to exceed twenty-five percent of the annual amount of the fees collected, for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands described in this subsection. The commissioner may also expend an amount not to exceed ten percent of the total annual assets in the fund to implement and administer the provisions of this chapter and chapters twenty-two and twenty-two-b of this code.
After the effective date of this subsection, every person then conducting coal surface-mining operations shall contribute into the fund a sum equal to three cents per ton of clean coal mined thereafter. This fee shall be collected by the state tax commissioner in the same manner as the West Virginia business and occupation tax in accordance with the provisions of chapter eleven of this code. Such tax shall be collected whenever the liabilities of the state established in this subsection exceed the accrued amount in the fund. The tax commissioner shall deposit the fees collected with the treasurer of the state of West Virginia to the credit of the special reclamation fund. The moneys in the fund shall be placed by the treasurer in interest bearing account with the interest being returned to the fund on an annual basis. At the beginning of each quarter, the commissioner shall advise the state tax commissioner and the governor of the assets, excluding payments, expenditures and liabilities, in the fund.

CHAPTER 83
(Com. Sub. for H. B. 4596—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request)
[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, seven and eight, article two of said chapter; to amend said chapter by adding thereto a new article, designated article two-a; and to amend and reenact section four, article three of said chapter, all relating generally to ethical standards of governmental officials and employees and disclosure of financial interest of such persons; providing additional immunity from sanctions for persons acting in good faith reliance on ethics commission advisory opinions; the selection of investigative panel members; providing public disclosure of certain commission actions;
providing that members of an investigative panel which finds probable cause cannot serve on the commission panel which renders final decision in case; the finding of truth or falsity of charges by the commission; requiring public disclosure of conciliation agreements; abeyance of commission action pending referral for criminal investigation; use of public office for private gain; permitting solicitation for charitable purposes; interests of public officials, public employees in public contracts; exemption from prohibited activities for persons employed in higher education; requiring disclosure of identity and nature of additional sources of income; excluding spouse's income from reporting requirements; disclosure of debtors and creditors; exempting certain debts and loans from being reported; requiring additional disclosure of gifts; emergency rule revoked; all disclosures made in manner prescribed by legislative rules; changes in expenditures to be reported by lobbyists; and deletion of provisions for requiring lobbyists to report additional information by legislative rule.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

1. Short Title; Legislative Findings, Purposes and Intent; Construction and Application of Chapter; Severability.

2. West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearances Before Public Agencies.

2A. Rules.

3. Lobbyists.
§6B-1-4. Remedies and penalties in addition to other applicable remedies and penalties.

The provisions of this chapter shall be in addition to any other applicable provisions of this code and except for the immunity provided by section three, article two of this chapter shall not be deemed to be in derogation of or as a substitution for any other provisions of this code, including, but not limited to, article five-a, chapter sixty-one of this code and except for the immunity provided by section three, article two of this chapter the remedies and penalties provided in this chapter shall be in addition to any other remedies or penalties which may be applicable to any circumstances relevant to both.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-3. Advisory opinions.

A person subject to the provisions of this chapter may make application in writing to the ethics commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter or the provisions of section fifteen, article ten, chapter sixty-one of this code and would thereby expose the person to sanctions by the commission or criminal prosecution. The commission shall respond within thirty days from the receipt of the request by issuing an advisory opinion on the matter raised in the request. All advisory opinions shall be published and indexed in the code of state rules by the secretary of state: Provided, That before an advisory opinion is made public, any material which may identify the person who is the subject of the opinion shall, to the fullest extent possible, be deleted.
and the identity of the person shall not be revealed. A person subject to the provisions of this chapter may rely upon the published guidelines or an advisory opinion of the commission, and any person acting in good faith reliance on any such guideline or opinion shall be immune from the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of this code, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon any such opinion or guideline in regard to the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of this code.

§6B-2-4. Complaints; dismissals; hearings; disposition; judicial review.

(a) Upon the filing by any person with the commission of a complaint which is duly verified by oath or affirmation, the executive director of the commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first class mail, unless the complainant or his or her representative personally filed the complaint with the commission and was given a receipt or other acknowledgement evidencing the filing. Within fourteen days after the receipt of a complaint, an investigative panel shall be appointed to investigate the substance of the allegations in the complaint and to determine whether there is probable cause to believe that a violation of this chapter has occurred. The commission shall establish by legislative rule promulgated in accordance with chapter twenty-nine-a of this code a rotation system for the selection of commission members to sit on investigative panels whereby the caseload of commission investigations is distributed among commission members as evenly and randomly as possible.

(b) In the case of a filed complaint, the first inquiry of the investigative panel shall be a question as to whether or not the allegations of the complaint, if taken as true, would constitute a violation of law upon which the commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the investigative panel to be insufficient
in this regard, the investigative panel shall dismiss the complaint.

(c) After the commission receives a complaint found by the investigative panel to be sufficient, the executive director shall give notice of a pending investigation by the investigative panel to the complainant and respondent. The notice of investigation shall be mailed to the parties, and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked “Addressee only, personal and confidential”.
The notice shall describe the conduct of the respondent which is the basis for an alleged violation of law, and if a complaint has been filed, a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the investigative panel, and that he or she may respond in writing to the commission within thirty days after the receipt of the notice, but that no fact or allegation shall be taken as admitted by a failure or refusal to timely respond.

(d) Within the forty-five day period following the mailing of a notice of investigation, the investigative panel shall proceed to consider (1) the allegations raised in the complaint, (2) any timely received written response of the respondent, and (3) any other competent evidence gathered by or submitted to the commission which has a proper bearing on the issue of probable cause. A respondent shall be afforded the opportunity to appear before the investigative panel and make an oral response to the complaint. The commission shall, in promulgating legislative rules pursuant to the provisions of subsection (a), section two of this article, prescribe the manner in which a respondent may present his or her oral response to the investigative panel. The commission may request a respondent to
disclose specific amounts received from a source, and other detailed information not otherwise required to be set forth in a statement or report filed under the provisions of this chapter, if the information sought is deemed to be probative as to the issues raised by a complaint or an investigation initiated by the commission. Any information thus received shall be confidential except as provided by subsection (f) of this section. If the person so requested fails or refuses to furnish the information to the commission, the commission may exercise its subpoena power as provided for elsewhere in this chapter, and any subpoena issued thereunder shall have the same force and effect as a subpoena issued by a circuit court of this state, and enforcement of any such subpoena may be had upon application to a circuit court of the county in which the investigative panel is conducting an investigation, through the issuance of a rule or an attachment against the respondent as in cases of contempt.

(e) (1) All investigations, complaints, reports, records, proceedings, and other information received by the commission and related to complaints made to the commission or investigations conducted by the commission pursuant to this section, including the identity of the complainant or respondent, shall be confidential and shall not be knowingly and improperly disclosed by any member or former member of the commission or its staff, except as follows:

(A) Upon a finding that probable cause exists to believe that a respondent has violated the provisions of this chapter, the complaint and all reports, records, non-privileged and nondeliberative material introduced at any probable cause hearing held pursuant to the complaint are thereafter not confidential: Provided, That confidentiality of such information shall remain in full force and effect until the respondent has been served by the commission with a copy of the investigative panel's order finding probable cause and with the statement of charges prepared pursuant to the provisions of subsection (g) of this section.

(B) After a finding of probable cause as aforesaid, any
subsequent hearing held in the matter for the purpose
of receiving evidence or the arguments of the parties or
their representatives shall be open to the public and all
reports, records and nondeliberative materials intro-
duced into evidence at such subsequent hearing, as well
as the commission’s orders, are not confidential.

(C) The commission may release any information
relating to an investigation at any time if the release has
been agreed to in writing by the respondent.

(D) The complaint as well as the identity of the
complainant shall be disclosed to a person named as
respondent in any such complaint filed with the
commission immediately upon such respondent’s
request.

(E) Where the commission is otherwise required by
the provisions of this chapter to disclose such informa-
tion or to proceed in such a manner that disclosure is
necessary and required to fulfill such requirements.

(2) If, in a specific case, the commission finds that
there is a reasonable likelihood that the dissemination
of information or opinion in connection with a pending
or imminent proceeding will interfere with a fair
hearing or otherwise prejudice the due administration
of justice, the commission shall order that all or a
portion of the information communicated to the commis-
sion to cause an investigation and all allegations of
ethical misconduct or criminal acts contained in a
complaint shall be confidential, and the person provid-
ing such information or filing a complaint shall be
bound to confidentiality until further order of the
commission.

(f) If a majority of the members of the investigative
panel fails to find probable cause, the proceedings shall
be dismissed by the commission in an order signed by
the majority members of the panel, and copies of the
order of dismissal shall be sent to the complainant and
served upon the respondent forthwith. If the investiga-
tive panel decides by a majority vote that there is
probable cause to believe that a violation under this
chapter has occurred, the majority members of the
investigative panel shall sign an order directing the
commission staff to prepare a statement of charges, to
assign the matter for hearing to the commission or a
hearing examiner as the commission may subsequently
direct, and to schedule a hearing to determine the truth
or falsity of the charges, such hearing to be held within
ninety days after the date of the order. For the purpose
of this section, service of process upon the respondent
is obtained at the time the respondent or the respond-
ent's agent physically receives the process, regardless of
whether the service of process is in person or by
certified mail.

(g) At least eighty days prior to the date of the
hearing, the respondent shall be served by certified
mail, return receipt requested, with the statement of
charges and a notice of hearing setting forth the date,
time and place for the hearing. The scheduled hearing
may be continued only upon a showing of good cause by
the respondent or under such other circumstances as the
commission shall, by legislative rule, direct.

(h) The commission members who have not served as
members of an investigative panel in a particular case
may sit as a hearing board to adjudicate the case or may
permit an assigned hearing examiner employed by the
commission to preside at the taking of evidence. The
commission shall, by legislative rule, establish the
general qualifications for hearing examiners. Such
legislative rule shall also contain provisions which seek
to ensure that the functions of a hearing examiner will
be conducted in an impartial manner, and shall describe
the circumstances and procedures for disqualification of
hearing examiners.

(i) A member of the commission or a hearing exa-
miner presiding at a hearing may:

(1) Administer oaths and affirmations, compel the
attendance of witnesses and the production of docu-
ments, examine witnesses and parties, and otherwise
take testimony and establish a record;

(2) Rule on offers of proof and receive relevant
evidence;
(3) Take depositions or have depositions taken when the ends of justice may be served;

(4) Regulate the course of the hearing;

(5) Hold conferences for the settlement or simplification of issues by consent of the parties;

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

(8) Take other action authorized by the ethics commission consistent with the provisions of this chapter.

(j) With respect to allegations of a violation under this chapter, the complainant has the burden of proof. The West Virginia rules of evidence as used to govern proceedings in the courts of this state shall be given like effect in hearings held before the commission or a hearing examiner. The commission shall, by legislative rule, regulate the conduct of hearings so as to provide full procedural due process to a respondent. Hearings before a hearing examiner shall be recorded electronically. When requested by either of the parties, the presiding officer shall make a transcript, verified by oath or affirmation, of each hearing held and so recorded. In the discretion of the commission, a record of the proceedings may be made by a certified court reporter. Unless otherwise ordered by the commission, the cost of preparing a transcript shall be paid by the party requesting the transcript. Upon a showing of indigency, the commission may provide a transcript without charge. Within fifteen days following the hearing, either party may submit to the hearing examiner that party's proposed findings of fact. The hearing examiner shall thereafter prepare his or her own proposed findings of fact and make copies of the findings available to the parties. The hearing examiner shall then submit the entire record to the commission for final decision.

(k) 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, and the proposed findings of fact of the hearing examiner
and the parties, constitute the exclusive record for decision by the commission members who have not served as members of the investigative panel, unless by leave of the commission a party is permitted to submit additional documentary evidence or take and file depositions or otherwise exercise discovery.

(I) The commission shall set a time and place for the hearing of arguments by the complainant and respondent, or their respective representatives, and shall notify the parties thereof, and briefs may be filed by the parties in accordance with procedural rules promulgated by the commission. The final decision of the commission shall be made by the commission members who have not served as members of the investigative panel in writing within forty-five days of the receipt of the entire record of a hearing held before a hearing examiner or, in the case of an evidentiary hearing held by the board in lieu of a hearing examiner, within twenty-one days following the close of the evidence.

(m) A decision on the truth or falsity of the charges against the respondent and a decision to impose sanctions must be approved by at least six members of the commission who have not served as members of the investigative panel.

(n) Members of the commission shall recuse themselves from a particular case upon their own motion with the approval of the commission or for good cause shown upon motion of a party. The remaining members of the commission shall, by majority vote, select a temporary member of the commission to replace a recused member: Provided, That the temporary member selected to replace a recused member shall be a person of the same status or category, provided by subsection (b), section one of this article, as the recused member.

(o) A complainant may be assisted by a member of the commission staff assigned by the commission after a determination of probable cause.

(p) No member of the commission staff may participate in the commission deliberations or communicate...
with commission members concerning the merits of a complaint after being assigned to prosecute a complaint.

(q) If the commission finds by evidence beyond a reasonable doubt that the facts alleged in the complaint are true and constitute a material violation of this article, it may impose one or more of the following sanctions:

(1) Public reprimand;
(2) Cease and desist orders;
(3) Orders of restitution for money, things of value, or services taken or received in violation of this chapter; or
(4) Fines not to exceed one thousand dollars per violation.

In addition to imposing such sanctions, the commission may recommend to the appropriate governmental body that a respondent be terminated from employment or removed from office.

The commission may institute civil proceedings in the circuit court of the county wherein a violation occurred for the enforcement of sanctions.

(r) At any stage of the proceedings under this section, the commission may enter into a conciliation agreement with a respondent if such agreement is deemed by a majority of the members of the commission to be in the best interest of the state and the respondent. Any conciliation agreement must be disclosed to the public: Provided, That negotiations leading to a conciliation agreement, as well as information obtained by the commission during such negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

(s) Decisions of the commission involving the issuance of sanctions may be appealed to the circuit court of Kanawha County, West Virginia, or to the circuit court of the county where the violation is alleged to have occurred, only by the respondent, and only upon the grounds set forth in section four, article five, chapter twenty-nine-a of this code.
(t) In the event the commission finds in favor of the person complained against, the commission shall order reimbursement of all actual costs incurred, including, but not limited to, attorney fees to be paid to the person complained against by the complainant, if the commission finds that the complaint was brought or made in bad faith. In addition, the aggrieved party shall have a cause of action and be entitled to compensatory damages, punitive damages, costs and attorney fees for a complaint made or brought in bad faith.

(u) If at any stage in the proceedings under this section, it appears to an investigative panel, a hearing examiner or the commission that a criminal violation may have been committed by a respondent, such situation shall be brought before the full commission for its consideration. If, by a vote of two thirds of the full commission, it is determined that probable cause exists to believe a criminal violation has occurred, it may recommend to the appropriate county prosecuting attorney having jurisdiction over the case that a criminal investigation be commenced. Deliberations of the commission with regard to a recommendation for criminal investigation by a prosecuting attorney shall be private and confidential. Notwithstanding any other provision of this article, once a referral for criminal investigation is made under the provisions of this subsection, the ethics proceedings shall be held in abeyance until action on the referred matter is concluded. If the commission determines that a criminal violation has not occurred, the commission shall remand the matter to the investigative panel, the hearing examiner or the commission itself as a hearing board, as the case may be, for further proceedings under this article.

(v) The provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine, and within one year before the filing of a complaint under subsection (a) of this section or the appointment of an investigative panel by the commission under subsection (b) of this section.
§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) Persons subject to section.—The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain.—(1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) The Legislature, in enacting this subsection (b), relating to the use of public office or public employment for private gain, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Such persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by such persons may have its own inherent prestige, it would be unfair to such individuals and against the best interests of the citizens of this state to deny such persons the right to hold public office or be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them.
Accordingly, the commission is directed, by legislative rule, to establish categories of such public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within such categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Such exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) Gifts.—(1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee: Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable
from the public generally, by the performance or nonperformance of his official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;
(B) Ceremonial gifts or awards which have insignificant monetary value;
(C) Unsolicited gifts of nominal value or trivial items of informational value;
(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;
(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;
(F) Gifts that are purely private and personal in nature; or
(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The acceptance of an honorarium by an elected public official is prohibited. The commission shall, by legislative rule, establish guidelines for the acceptance of reasonable honorariums by all other public officials and public employees other than elected public officials.
(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The governor or his designee may, in the name of the state of West Virginia, accept and receive gifts from any public or private source. Any such gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the division of culture and history.

(d) Interests in public contracts.—(1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this subsection is:

(A) An interest:
(i) Not exceeding ten percent of the partnership or the outstanding shares of a corporation; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract; or

(B) An interest as a creditor:

(i) Not exceeding ten percent of the total indebtedness of a business; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract.

(3) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) Confidential information.—No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) Prohibited representation.—No present or former elected or appointed public official or public employee shall during or after his or her public employment or service represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other specific matter which arose during his or her period of public service or employment and in which he or she personally participated in a decision-making, advisory or staff support capacity.

(g) Limitation on practice before a board, agency, commission or department.—(1) No elected or appointed public official and no full-time staff attorney or
accountant shall, during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed regulation;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist, or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within six months after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature
and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state, or of county or municipal governments including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection (g) may apply to the ethics commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Seeking employment with regulated person prohibited.—(1) No full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by, any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term "employment" within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

(2) No person regulated by a governmental agency shall offer employment to a full-time public official or full-time public employee of the regulating governmental agency during the period of time the public official or employee works or serves in such agency.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the ethics commission for an exemption from the prohibition
against seeking employment with a person who is or 
may be regulated, when the person's education and 
experience is such that the prohibition would, for all 
practical purposes, deprive the person of the ability to 
earn a livelihood in this state outside of the governmen-
tal agency. The ethics commission shall by legislative 
rule establish general guidelines or standards for 
granting an exemption, but shall decide upon each 
application on a case-by-case basis.

(i) Members of the Legislature required to vote.—
Members of the Legislature who have asked to be 
excused from voting or who have made inquiry as to 
whether they should be excused from voting on a 
particular matter and who are required by the presid-
ing officer of the House of Delegates or Senate of West 
Virginia to vote under the rules of the particular house 
shall not be guilty of any violation of ethics under the 
provisions of this section for a vote so cast.

(j) Limitations on participation in licensing and rate-
making proceedings.—No public official or employee 
may participate within the scope of his or her duties as a 
public official or employee, except through ministerial 
functions as defined in section three, article one of this 
chapter, in any license or rate-making proceeding that 
directly affects the license or rates of any person, 
partnership, trust, business trust, corporation, or 
association in which the public official or employee or 
his or her immediate family owns or controls more than 
ten percent. No public official or public employee may 
participate within the scope of his or her duties as a 
public official or public employee, except through 
ministerial functions as defined in section three, article 
one of this chapter, in any license or rate-making 
proceeding that directly affects the license or rates of any person to whom the public official or public 
employee or his or her immediate family, or a partner-
ship, trust, business trust, corporation, or association of 
which the public official or employee, or his or her 
individual, owns or controls more than ten percent, has sold goods or services totaling more than 
one thousand dollars during the preceding year, unless
the public official or public employee has filed a written
statement acknowledging such sale with the public
agency and the statement is entered in any public record
of the agency's proceedings. This subsection shall not be
construed to require the disclosure of clients of attorneys
or of patients or clients of persons licensed pursuant to
articles three, eight, fourteen, fourteen-a, fifteen,
sixteen, twenty, twenty-one or thirty-one, chapter thirty
of this code.

(k) Certain expenses prohibited.—No public official or
public employee shall knowingly request or accept from
any governmental entity compensation or reimburse-
ment for any expenses actually paid by a lobbyist and
required by the provisions of this chapter to be reported,
or actually paid by any other person.

(l) Any person who is employed as a member of the
faculty or staff of a public institution of higher
education and who is engaged in teaching, research,
consulting or publication activities in his or her field of
expertise with public or private entities and thereby
derives private benefits from such activities shall be
exempt from the prohibitions contained in subsections
(b), (c) and (d) of this section when the activity is
approved as a part of an employment contract with the
governing board of such institution or has been ap-
proved by the employees' department supervisor or the
president of the institution by which the faculty or staff
member is employed.

(m) The commission by legislative rule promulgated
in accordance with chapter twenty-nine-a of this code
may define further exemptions from this section as
necessary or appropriate.

§6B-2-7. Financial disclosure statement; contents.

1 The financial disclosure statement required under this
2 article shall contain the following information:

3 (1) The name, residential and business addresses of
4 the person filing the statement and all names under
5 which the person does business.
(2) The name and address of each employer of the person.

(3) The identification, by category, of every source of income over five thousand dollars received during the preceding calendar year, in his or her own name or by any other person for his or her use or benefit, by the person filing the statement, and a brief description of the nature of the services for which the income was received. This subdivision does not require a person filing the statement who derives income from a business, profession or occupation to disclose the individual sources and items of income that constitute the gross income of that business, profession or occupation, nor does this subdivision require a person filing the statement to report the source or amount of income derived by his or her spouse.

(4) If the person profited or benefited in the year prior to the date of filing from a contract for the sale of goods or services to a state, county, municipal or other local governmental agency either directly or through a partnership, corporation or association in which such person owned or controlled more than ten percent, the person shall describe the nature of the goods or services and identify the governmental agencies which purchased the goods or services.

(5) Each interest group or category listed below doing business in this state with which the person filing the statement did business or furnished services and from which the person received more than twenty percent of the person's gross income during the preceding calendar year. The groups or categories are electric utilities, gas utilities, telephone utilities, water utilities, cable television companies, interstate transportation companies, intrastate transportation companies, oil or gas retail companies, banks, savings and loan associations, loan or finance companies, manufacturing companies, surface mining companies, deep mining companies, mining equipment companies, chemical companies, insurance companies, retail companies, beer, wine or liquor companies or distributors, recreation related companies, timbering companies, hospitals or other health care
providers, trade associations, professional associations, associations of public employees or public officials, counties, cities or towns, labor organizations, waste disposal companies, wholesale companies, groups or associations seeking to legalize gambling, advertising companies, media companies, race tracks and promotional companies.

(6) The names of all persons, excluding that person's immediate family, parents, or grandparents residing or transacting business in the state to whom the person filing the statement owes, on the date of execution of this statement in the aggregate in his or her own name or in the name of any other person more than twelve thousand five hundred dollars: Provided, That nothing herein shall require the disclosure of a mortgage on the person's primary and secondary residences or of automobile loans on automobiles maintained for the use of the person's immediate family, or of a student loan, nor shall this section require the disclosure of debts which result from the ordinary conduct of such person's business, profession, or occupation or of debts of the person filing the statement to any financial institution, credit card company, or business, in which the person has an ownership interest: Provided, however, That the previous proviso shall not exclude from disclosure loans obtained pursuant to the linked deposit program provided for in article one-a, chapter twelve of this code or any other loan or debt incurred which requires approval of the state or any of its political subdivisions.

(7) The names of all persons except immediate family members, parents and grandparents residing or transacting business in the state (other than a demand or savings account in a bank, savings and loan association, credit union or building and loan association or other similar depository) who owes on the date of execution of this statement, more, in the aggregate, than twelve thousand five hundred dollars to the person filing the statement, either in his or her own name or to any other person for his or her use or benefit. This subdivision does not require the disclosure of debts owed to the person filing the statement which debts result from the
ordinary conduct of such person's business, profession or occupation or of loans made by the person filing the statement to any business in which the person has an ownership interest.

(8) The source of each gift having a value of over one hundred dollars, received from a person having a direct and immediate interest in a governmental activity over which the person filing the statement has control, shall be reported by the person filing the statement when such gift is given to said person in his or her name or for his or her use or benefit during the preceding calendar year: Provided, That gifts received by will or by virtue of the laws of descent and distribution, or received from one's spouse, child, grandchild, parents or grandparents, or received by way of distribution from an inter vivos or testamentary trust established by the spouse or child, grandchild, or by an ancestor of the person filing the statement are not required to be reported. As used in this subdivision any series or plurality of gifts which exceeds in the aggregate the sum of one hundred dollars from the same source or donor, either directly or indirectly, and in the same calendar year, shall be regarded as a single gift in excess of that aggregate amount.

§6B-2-8. Exceptions to financial disclosure requirements and conflicts of interest provisions.

(a) Any person regulated by the provisions of this article need not report the holdings of or the source of income from any of the holdings of:

(1) Any qualified blind trust; or

(2) A trust—

(A) Which was not created directly by such individual, his spouse, or any dependent child, and

(B) The holdings or sources of income of which such individual, or a member of his or her immediate family, have no knowledge.

Failure to report the holdings of or the source of income of any trust referred to herein in good faith
reliance upon this section shall not constitute a violation of sections six or seven of this article.

(b) The provisions of subsection (d), section five of this article shall not apply to holdings which are assets within the trusts referred to in subsection (a) of this section.

(c) For purposes of this section, the term "qualified blind trust" includes a trust in which a regulated person or immediate family has a beneficial interest in the principal or income, and which meets the following requirements:

(1) The trustee of the trust is a financial institution, an attorney, a certified public accountant, a broker, or an investment adviser, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust)—

(A) Is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party;

(B) Is not or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(C) Is not a relative of any interested party.

(2) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the ethics commission;

(3) The trust instrument which establishes the trust provides that—

(A) Except to the extent provided in paragraph (F) of this subdivision the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;
(B) The trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(C) The trustee shall promptly notify the regulated person and the ethics commission when the holdings of any particular asset transferred to the trust by any interested party are disposed of;

(D) The trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(E) An interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law, but such report shall not identify any asset or holding;

(F) Except for communications which solely consist of requests for distribution of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (i) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (ii) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (iii) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of
duties by the reporting individual (but nothing herein shall require any such direction); and

(G) The interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this section.

(4) The proposed trust instrument and the proposed trustee is approved by the ethics commission and approval shall be given if the conditions of this section are met.

ARTICLE 2A. RULES.

§6B-2A-1. Legislative rules; revocation of existing commission emergency rules; manner of reporting.

(a) West Virginia ethics commission emergency rule one hundred fifty-eight is hereby revoked.

(b) Any disclosure form, statement or report required under any provision of this chapter shall be made in a manner prescribed by legislative rule of the commission.

ARTICLE 3. LOBBYISTS.

§6B-3-4. Reporting by lobbyists.

(a) A lobbyist shall file with the commission reports of his lobbying activities, signed under oath or affirmation by the lobbyist. Lobbyists who are required under this article to file copies of their registration statements with the clerks of the respective houses of the Legislature shall also contemporaneously file copies of all reports required under this section with the clerks. Such reports shall be filed as follows:

(1) On or before the second Monday in January of each year, a lobbyist shall file an annual report of all lobbying activities which he or she engaged in during the preceding calendar year; and

(2) If a lobbyist engages in lobbying with respect to legislation, then:
(A) Between the fortieth and forty-fifth days of any regular session of the Legislature in which any such lobbying occurred, the lobbyist shall file a report describing all of his or her lobbying activities which occurred since the beginning of the calendar year; and

(B) Within twenty-one days after the adjournment sine die of any regular or extraordinary session of the Legislature in which any such lobbying occurred, the lobbyist shall file a report describing all of his or her lobbying activities which occurred since the beginning of the calendar year or since the filing of the last report required by this section, whichever is later.

(b) (1) Except as otherwise provided in this section, each report filed by a lobbyist shall show the total amount of all expenditures for lobbying made or incurred by such lobbyist, or on behalf of such lobbyist by the lobbyist's employer, during the period covered by the report. The report shall also show subtotals segregated according to financial category, including meals and beverages; living accommodations; advertising; travel; contributions; gifts to public officials or employees or to members of the immediate family of such persons; and other expenses or services.

(2) Lobbyists are not required to report the following:

(A) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

(B) Any expenses incurred for his or her own living accommodations;

(C) Any expenses incurred for his or her own travel to and from public meetings or hearings of the legislative and executive branches;

(D) Any expenses incurred for telephone, and any office expenses, including rent and salaries and wages paid for staff and secretarial assistance; and

(E) Separate expenditures to or on behalf of a public official or employee in an amount of less than five dollars.

(c) If a lobbyist is employed by more than one
employer, the report shall show the proportionate amount of such expenditures in each category incurred on behalf of each of his employers.

(d) The report shall describe the subject matter of the lobbying activities in which the lobbyist has been engaged during the reporting period.

(e) If, during the period covered by the report, the lobbyist made expenditures in the reporting categories of meals and beverages, lodging, travel, gifts or other expenditures, other than for those expenditures governed by subsection (f) of this section, which expenditures in any such reporting category total more than twenty-five dollars to or on behalf of any particular public official or employee, the lobbyist shall report the name of the public official or employee to whom or on whose behalf the expenditures were made, the total amount of the expenditures, and the subject matter of the lobbying activity, if any. Under this subsection (e), no portion of the amount of an expenditure for a dinner, party, or other function sponsored by a lobbyist or a lobbyist's employer need be attributed to or counted toward the reporting amount of twenty-five dollars for a particular public official or employee who attends such function if the sponsor has invited to the function all the members of (1) the Legislature, (2) either house of the Legislature, (3) a standing or select committee of either house, or (4) a joint committee of the two houses of the Legislature. However, the amount spent for such function shall be added to other expenditures for the purpose of determining the total amount of expenditures reported under subsection (b) of this section.

(f) If, during the period covered by the report, the lobbyist made expenditures in the reporting categories of meals and beverages, lodging, travel, gifts and scheduled entertainment, which reporting expenditures in any such reporting category total more than twenty-five dollars for or on behalf of a particular public official or public employee in return for the participation of the public official or employee in a panel or speaking engagement at the meeting, the lobbyist shall report the
name of the public official or employee to whom or on whose behalf the expenditures were made and the total amount of the expenditures.

CHAPTER 84


[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to authorized priests, nuns, members of the clergy or rabbis not being compelled to testify in criminal, grand jury or domestic relations proceedings as to communications made to them in their professional capacities.

Be it enacted by the Legislature of West Virginia:

That article three, chapter fifty-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 nine, to read as follows:

ARTICLE 3. COMPETENCY OF WITNESSES.

§57-3-9. Communications to priests, nuns, clergymen, rabbis or other religious counselors not subject to being compelled as testimony.

1 No priest, nun, rabbi or member of the clergy authorized to celebrate the rites of marriage in this state pursuant to the provisions of article one, chapter forty-eight of this code shall be compelled to testify in any criminal or grand jury proceedings or in any domestic relations action in any court of this state:

7 (1) With respect to any confession or communication, made to such person, in his or her professional capacity in the course of discipline enjoined by the church or
other religious body to which he or she belongs, without the consent of the person making such confession or communication; or

(2) With respect to any communication made to such person, in his or her professional capacity, by either spouse, in connection with any effort to reconcile estranged spouses, without the consent of the spouse making the communication. This subsection is in addition to the protection and privilege afforded pursuant to section ten-a, article two, chapter forty-eight of this code.

CHAPTER 85
(S. B. 614—Originating in the Senate Committee on the Judiciary)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to evidence and witnesses; and certain reproductions deemed duplicates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-12. Certain documents deemed duplicates.

A reproduction of a document acquired from the employment of a system of microphotography, optical discs or computerized techniques which system does not permit additions, deletions or changes to the record of the original document contained within the system shall be deemed to be a duplicate for purposes of admission into evidence in the courts of this state.

A reproduction deemed a duplicate pursuant to the
provisions of this section shall be authenticated by competent testimony or by an attestation which shall recite the type of recording system employed, that such system does not permit additions, deletions or changes to the record and that the attestant has actual knowledge of the aforementioned facts.

The provisions of this section shall be construed to provide an additional method of qualifying original writings or recordings and duplicates thereof as admissible in evidence, and shall not replace or derogate any other methods set forth elsewhere in this code or provided for in the West Virginia rules of evidence as adopted by the supreme court of appeals.

CHAPTER 86
(Com. Sub. for H. B. 4502—By Delegates Mezzatesta and Kelly)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to repeal section nine, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, five, six and eight of said article; and to further amend said article twelve-a by adding thereto a new section, designated section six-a, all relating to the farm management commission; deleting penalty; continuing commission to allow for completion of performance audit; powers and duties of commission; management plan; requiring the purchase and sale of food produced at institutional farms at prevailing wholesale prices; transfer of certain lands to the public land corporation to be sold; special revenue account; employees.

Be it enacted by the Legislature of West Virginia:

That section nine, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three, five, six and eight of said article be amended and reenacted; and that said article twelve-a be further amended by adding thereto a new section, designated section six-a, all to read as follows:
CHAPTER 19. AGRICULTURE.

ARTICLE 12A. FARM MANAGEMENT COMMISSION.

§19-12A-3. Farm management commission continued; composition; chairman; quorum; meetings; vacancies.


§19-12A-6. Appointment of farm management director; qualifications; powers and duties.

§19-12A-6a. Special revenue account.

§19-12A-8. Effect of management plan on employees.

§19-12A-3. Farm management commission continued; composition; chairman; quorum; meetings; vacancies.

The farm management commission heretofore created is hereby continued and shall be composed of three members who are the commissioner of agriculture, who shall be chairman, the secretary of the department of administration, and the dean of the West Virginia University College of Agriculture and Forestry. No business may be transacted by the commission in the absence of a quorum which consists of two members including the chairman. The farm management commission shall hold meetings at least once every two months, and on call of the chairman.

If a vacancy occurs on the commission, the farm management director, as provided in this article, shall act as a member of the commission until the vacancy is filled.

If a vacancy occurs in the office of the commissioner of agriculture, the members of the commission and the farm management director shall select, from among them, a chairman to serve until a commissioner of agriculture is appointed or elected and qualified.

Pursuant to the provisions of section four, article ten, chapter four of this code, the farm management commission shall continue to exist until the first day of July, one thousand nine hundred ninety-two, to allow for the completion of an audit by the joint committee on government operations.

(a) On or before the first day of July, one thousand nine hundred ninety, the commission shall meet and confer with respect to the development of a management plan to determine the optimum use or disposition of all institutional farms, at which time the farm management director shall provide the commission with a complete inventory of all institutional farms, and such information relating to easements, mineral rights, appurtenances, farm equipment, agricultural products, livestock, inventories and farm facilities as may be necessary to develop such management plan. The commission shall complete and provide to the governor a management plan, which plan shall set forth the objectives of the commission with respect to institutional farms, the criteria by which the commission shall determine the optimum use or disposition of such property, and determinations as to whether each institutional farm shall be used in production, sold, or leased, in whole or in part. Prior to the adoption of any plan, the commission shall consult with the secretaries of the various departments of state government and shall request from such secretaries suggestions for land use and resource development on farm commission lands. On or before the first day of December, one thousand nine hundred ninety, such management plan shall be presented to the Legislature, by providing a copy to the president of the Senate and the speaker of the House of Delegates. The commission may confer with any other agency or individual in implementing and adjusting its management plan. The management plan established pursuant to this subsection may be amended, from time to time, as may be necessary.

(b) The commission shall manage its institutional farms, equipment and other property in order to most efficiently produce food products for state institutions and shall implement the intent of the Legislature as set forth by this article. From the total amount of food, milk and other commodities produced on institutional farms, the commission shall sell, at prevailing wholesale prices,
and each of the institutions under the control of the division of health and the division of corrections shall purchase, a proportionate amount of these products based on the dietary needs of each institution.

(c) If requested by the commissioner of corrections, the commission may authorize the division of corrections to operate a farm or other enterprise using inmates as labor on such lands. The commissioner of corrections shall be responsible for the selection, direction and supervision of the inmates and shall assign the work to be performed by inmates.

(d) The commission is hereby authorized and empowered to:

(1) Lease to public or private parties, for purposes including agricultural production or experimentation, public necessity, or other purposes permitted by the management plan, any land, easements, equipment, or other property, except that property may not be leased for any use in any manner that would render the land toxic for agricultural use, nor may toxic or hazardous materials as identified by the commissioner of agriculture be used or stored upon such property unless all applicable state and federal permits necessary are obtained. Any lease for an annual consideration of one thousand dollars or more shall be by sealed bid auction and the commission shall give notice of such auction by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the property to be leased is located;

(2) Transfer to the public land corporation land designated in its management plan as land to be disposed of, which land shall be sold, exchanged or otherwise transferred pursuant to sections four and five, article one-a, chapter twenty of this code: Provided, That the net proceeds of the sale of farm commission lands shall be deposited in the general revenue fund of the state: Provided, however, That no sale may be concluded until on or after the fifteenth day of March, one
(3) Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas or mineral resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the division of energy will increase the beneficial use of such property. Any such contract or lease shall be by sealed bid auction as provided for in subdivision (1) above;

(4) Exercise all other powers and duties necessary to effectuate the purposes of this article.

(e) Notwithstanding the provisions of subsection (d) herein, no timberland may be leased, sold, exchanged or otherwise disposed of, unless the division of forestry of the department of commerce, labor and environmental resources certifies that there is no commercially salable timber on the timberland, an inventory is provided, an appraisal of the timber is provided, and the sale, lease, exchange or other disposition is accomplished by the sealed bid auction procedure provided above in subdivisions (1) or (2), as applicable.

(f) The commission shall promulgate, pursuant to chapter twenty-nine-a of this code, rules and regulations relating to the powers and duties of the commission as enumerated in this section.

§19-12A-6. Appointment of farm management director; qualifications; powers and duties.

The commission shall appoint a farm management director who, in addition to qualifications established by the commission, shall have owned, operated or managed a farm for at least five years within ten years immediately prior to being appointed. The farm management director is the chief executive officer of the commission and is responsible for conducting the operations of the
farms. The director shall prepare an annual report of the farming operations, including a listing of all receipts and expenditures and shall present it to the commission and the Legislature at the end of each fiscal year.

As authorized or directed by the commission, the director shall also:

1. Prepare the annual budget request for the operation of the institutional farms and submit it to the commission for approval and submission to the secretary of the department of administration.

2. Receive and approve all requisitions for farm supplies and equipment.

3. Supervise the operation of all canneries and determine what foods are to be canned.

4. Recruit and approve assistant farm managers to supervise each institutional farm.

5. Implement all orders of the commission.

6. Supervise all other employees of the commission.

7. Transfer farm supplies, farm equipment, farm facilities, food stuffs and produce from one institutional farm to another to promote efficiency and improve farm management.

With the approval of the commission, the farm management director may rent or lease additional land for farm use.

By the thirtieth day of September each year, each institution under the control of the division of health and the division of corrections shall present to the farm management director a purchase order for its food requirements during the next fiscal year as determined by the institution. If, during the year, an institution finds that it needs other or additional food, milk, or commodities not included in its purchase order for the year, the institutional superintendent may forward a supplemental request to the farm management director, which order may be filled depending on availability. If institutional farms produce more food, milk and other
commodities than can be sold to the institutions, the
farm management director may sell the surplus to other
state agencies willing to purchase. If any surplus
remains after sales to other state agencies, the director
may sell the surplus on the open market, or at the
discretion of the director, turn over any surplus food
products to appropriate public, nonprofit agencies upon
application.

On the first day of July, one thousand nine hundred
ninety, the division of health and the division of
corrections shall each transfer, by interdepartmental
transfer, the sum of two hundred thousand dollars to the
farm management commission to be credited toward
their purchase of food products from the commission.
Such credits shall be treated as advance payments for
food products purchased by these divisions pursuant to
this section and such divisions shall not be required to
make actual payments for food products until such
credits have been completely expended.

§19-12A-6a. Special revenue account.

All funds collected by the commission by virtue of this
article, whether from the sale of food, the disposition of
assets other than land, the lease of land or minerals, or
any other source, shall be paid into a special revenue
account to be used for the purposes of this article:
Provided, That when the aggregate of said funds so
collected and deposited in the special revenue account
in any fiscal year total one million five hundred
dollar, the commission shall deposit any funds
collected in excess thereof in the general revenue fund
of the state.

§19-12A-8. Effect of management plan on employees.

Nothing contained in section five of this article shall
be construed to abridge the rights of farm employees of
the commission within the classified service of the state
to the procedures and protections of sections ten and ten-
a, article six, chapter twenty-nine of this code, subject
to the limitations set forth in subsection (d), section two,
article two, chapter five-f of this code.
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 removing the requirement that a copy of the state fire code and amendments to the code be filed with each county clerk.

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, regulations and statewide building code.

(a) The state fire commission shall promulgate and repeal rules and regulations to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state pursuant to the provisions of chapter twenty-nine-a of this code through the adoption of a state building code. Such rules, regulations, amendments or repeals thereof 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 shall have force and effect in those counties and municipalities adopting the state building code.

(b) Pursuant to the provisions of chapter twenty-nine-a of this code, on the first day of July, 1988, the state fire commission shall commence promulgation of comprehensive rules and regulations regarding building construction, renovation and all other aspects as related to the construction and mechanical operations of a
structure. Upon the completion of the promulgation of the rules and regulations, such rules and regulations 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: Provided, That the state fire marshal shall provide compliance alternatives for historic structures and sites as provided for in section five, article one of this chapter, which compliance alternatives shall take into account the historic integrity of said historic structures and sites. 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 fire code, the provisions of such state law, county or municipal ordinance or regulation of any agency thereof shall govern, provided 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 fire regulations 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.

(e) After the state fire commission has promulgated rules and regulations as provided herein, each county or municipality intending to adopt the state building code shall notify the state fire commission of its intent.

The state fire commission may conduct public meetings in each county or municipality adopting the state building code to explain the provisions of such rules and regulations.
CHAPTER 88
(Com. Sub. for H. B. 2609—By Delegate Murphy)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen-b, relating to the fire prevention and control act; and authorizing the use of live trees in public buildings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16b. Use of live trees in public buildings; exceptions.

1 Notwithstanding any other provision of law to the contrary, live trees may be displayed in public buildings if the trees are not decorated with electrical lights or are decorated with U.L. approved miniature lights. The provisions of this section do not apply to public buildings used for education, health care, nursing homes or correctional facilities.

CHAPTER 89
(Com. Sub. for H. B. 4012—By Delegate Gallagher)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to the posting of the alcoholic content of gasoline offered for retail sale.
Be it enacted by the Legislature of West Virginia:

That article ten, 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 six-a, to read as follows:

ARTICLE 10. LIQUID FUELS AND LUBRICATING OILS.

§47-10-6a. Posting of the alcoholic content of gasoline.

1 Any retail distributor of gasoline who sells gasoline to
2 which has been added any alcohol, whether methanol,
3 ethanol or other form of alcohol, shall post upon or near
4 every pump maintained for the delivery of gasoline to
5 a consumer a prominent notice stating the name of the
6 alcoholic additive and the percentage it comprises of the
7 gasoline delivered through the pumps.

CHAPTER 90
(H. B. 4011—By Delegate Love)

[Passed January 26, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen-d, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the United States geological survey program within the department of natural resources.

Be it enacted by the Legislature of West Virginia:

That section eighteen-d, 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.

§20-1-18d. United States geological survey continued and reestablished.

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter
4 four of this code, the Legislature hereby finds and
Ch. 91] HEALTH 749

5 declares that the United States geological survey
6 program within the department of natural resources
7 should be continued and reestablished. Accordingly,
8 notwithstanding the provisions of section four, article
9 ten, chapter four of this code, the United States
10 geological survey program within the department of
11 natural resources shall continue to exist until the first
12 day of July, one thousand nine hundred ninety-six.

CHAPTER 91

(Com. Sub. for H. B. 4344—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed February 28, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter
sixteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to powers and
duties of the director of health and providing the
director, upon gubernatorial approval, the power to
close, sell, lease or contract out the operation of specified
health care facilities; providing for a report to the joint
committee on government and finance relative to patient
transfers; requiring public hearings under specified
conditions; providing certain employment preferences in
state agencies for specified employees; and requiring an
annual report to the Legislature.

Be it enacted by the Legislature of West Virginia:

That section ten, article one, 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 1. STATE DIVISION OF HEALTH.

§16-1-10. Powers and duties of the director of health.

1 The director shall be the chief executive, administra-
2 tive and fiscal officer of the division of health and shall
3 have the following powers and duties:

4 (1) To supervise and control the business, fiscal,
administrative and health affairs of the division of
health, and in that regard and in accordance with law,
employ, fix the compensation of, and discharge all
persons necessary for the proper execution of the laws
of this state relating to health and mental health, and
the efficient and proper discharge of the duties imposed
upon, and execution of powers vested in the director by
law; to that end the director may promulgate such
written rules as are necessary and proper to delegate
functions, establish subdivisions, specify duties and
responsibilities, prescribe qualifications of subdivision
directors and otherwise administer or supervise the
division, subject to the safeguards of the state civil
service system as it now exists;

(2) To enforce all laws of this state concerning public
health, health and mental health; to that end, the
director shall make, or cause to be made, sanitary
investigations and inquiries respecting the cause of
disease, especially of epidemics and endemic conditions,
and the means of prevention, suppression or control of
such conditions; the source of sickness and mortality,
and the effects of environment, employment, habits and
circumstances of life on the public health. The director
shall further make, or cause to be made, inspections and
examinations of food, drink and drugs offered for sale
or public consumption in such manner as the director
shall deem necessary to protect the public health and
shall report all violations of laws and regulations
relating thereto to the prosecuting attorney of the county
in which such violations occur;

(3) To make complaint or cause proceedings to be
instituted against any person, corporation or other entity
for the violation of any health law before any court or
agency, without being required to give security for costs;
such action may be taken without the sanction of the
prosecuting attorney of the county in which the proceed-
ings are instituted or to which the proceedings relate;

(4) To supervise and coordinate the administration
and operation of the state hospitals named in article two,
chapter twenty-seven of this code, and any other state
facility hereafter created for the mentally ill, mentally retarded or addicted: Provided, That notwithstanding any other provisions of this code, in the interest of promoting cost effective health care in government, the director, with the approval of the secretary of the department of health and human resources and the governor, has the power to close, sell or lease or otherwise transfer the Greenbrier School for Retarded Children or Spencer State Hospital, or to arrange for the administration and operation of said facility by contract or other means: Provided, however, That savings realized pursuant to the closure, sale or lease of the facility or the contracting out of the operation of the facility shall remain in the “Hospital Services Revenue Account”: Provided further, That prior to any transfer of patients as a result of any closure, sale, lease, contracting out of the operations, or other transfer made pursuant to this subdivision, a comprehensive plan detailing specifically which hospitals are to be closed, sold, leased or managed under contract in whole or in part; an analysis of the impact such action will have on other state facilities, their patients and their staff; a detailed plan for the care, placement and movement of patients including offering relocation counseling; a plan to assist affected employees in finding other employment, including retraining and education and relocation counseling; an economic and community impact statement detailing savings and costs associated with the proposed closing, sale, lease or management of such state facilities, and the effect on local and state employment, revenues and services, shall be submitted to the joint committee on government and finance: And provided further, That prior to any closure, sale, lease, contracting out of the operations, or other transfer, the joint committee on government and finance shall conduct a public hearing on the proposal in the affected area of the state. Any person to whom such facility is sold, leased, or otherwise transferred or by contract or other means administers and operates such facility or who operates such facility as an intermediate care facility for the mentally retarded shall operate such facility in accordance with applicable federal laws and
regulations and with chapter twenty-seven of this code
and shall use best efforts to employ qualified persons
who were employed at the facility by the state imme-
diately prior to such transfer or contract: And provided
further, That, notwithstanding any other provision of the
code to the contrary, in filling vacancies at other
facilities or state agencies the director and other
directors of state agencies shall, for a period of twenty-
four months after such transfer or contract, give
preference, over all but existing employees in such other
facilities named in article two, chapter twenty-seven and
article five-c, chapter sixteen of this code, to qualified
persons who were permanently employed at the facility
immediately prior to such transfer or contract: And
provided further, That qualified persons who were
permanently employed at the facility immediately prior
to such transfer or contract shall not supersede those
employees with recall rights in other state agencies: And
provided further, That preferential consideration be
given to West Virginia businesses or corporations
headquartered in West Virginia, whenever possible, for
the purchase, lease or other transfer of a facility under
the provisions of this subsection;

(5) To supervise and coordinate the administration
and operation of the health and other facilities named
in chapter twenty-six of this code, except as otherwise
therein provided, and any other state facility hereafter
created relating to health, not otherwise provided for:
Provided, That notwithstanding any other provisions of
this code, in the interest of promoting cost effective
health care in government, the director, with the
approval of the secretary of the department of health
and human resources and the governor, has the power
to close, sell or lease or otherwise transfer Andrew S.
Rowan Memorial Home and the Denmar State Hospital,
or to arrange for the administration and operation of
such facilities by contract or other means: Provided,
however, That savings realized pursuant to the closure,
sale or lease of any facility or the contracting out of the
operation of any facility shall remain in the "Hospital
Services Revenue Account": Provided further, That prior
to any transfer of patients as a result of any closure, sale,
lease, contracting out of the operations, or other transfer
made pursuant to this subdivision, a comprehensive plan
detailing specifically which hospitals are to be closed,
sold, leased or managed under contract in whole or in
part; an analysis of the impact such action will have on
other state facilities, their patients and their staff; a
detailed plan for the care, placement and movement of
patients including offering relocation counseling; a plan
to assist affected employees in finding other employ-
ment, including retraining and education and relocation
counseling; an economic and community impact state-
dment detailing savings and costs associated with the
proposed closing, sale, lease or management of such
state facilities, and the effect on local and state
employment, revenues and services, shall be submitted
to the joint committee on government and finance: *And
provided further,* That prior to any closure, sale, lease,
contracting out of the operations, or other transfer, the
joint committee on government and finance shall
conduct a public hearing on the proposal in the affected
area of the state. Any person to whom such facility is
sold, leased, or otherwise transferred, or by contract or
other means administers and operates such facility or
who operates such facility as a personal care home or
nursing home for the mentally retarded, shall operate
such facility in accordance with applicable federal laws
and regulations and with chapter twenty-seven or
article five-c, chapter sixteen of this code and shall use
best efforts to employ qualified persons who were
employed at the facility by the state immediately prior
to such transfer or contract: *And provided further,* That,
notwithstanding any other provision of the code to the
contrary, in filling vacancies at other facilities or other
state agencies the director and the directors of other
state agencies shall, for a period of twenty-four months
after such transfer or contract, give preference, over all
but existing employees in such other facilities named in
article two, chapter twenty-seven and article five-c,
chapter sixteen of this code, to qualified persons who
were permanently employed at the facility immediately
prior to such transfer or contract: *And provided further,*
That qualified persons who were permanently employed
at the facility immediately prior to such transfer or
contract shall not supersede those employees with recall
rights in other state agencies: And provided further,
That preferential consideration be given to West
Virginia businesses or corporations headquartered in
West Virginia, whenever possible, for the purchase,
lease or other transfer of a facility under the provisions
of this subsection;

(6) To supervise and coordinate the administration
and operation of the county and municipal boards of
health and health officers;

(7) To develop and maintain a state plan of operation
which sets forth the needs of the state in the areas of
health and mental health; goals and objectives for
meeting those needs; methods for achieving the stated
goals and objectives; and needed personnel, funds and
authority for achieving the goals and objectives;

(8) To collect data as may be required to foster
knowledge on the citizenry's health status, the health
system and costs of health care;

(9) To delegate to any appointee, assistant or employee
any and all powers and duties vested in the director,
including, but not limited to, the power to execute
contracts and agreements in the name of the division:
Provided, That the director shall be responsible for the
acts of such appointees, assistants and employees;

(10) To transfer, notwithstanding other provisions of
this code, any patient or resident between hospitals and
facilities under the control of the director and, by
agreement with the state commissioner of corrections or
successor thereto and otherwise in accord with law,
accept a transfer of a resident of a facility under the
jurisdiction of the state commissioner of corrections or
successor thereto;

(11) To make periodic reports to the governor and to
the Legislature relative to specific subject areas of
public health or mental health, the state facilities under
the supervision of the director, or other matters
affecting the health or mental health of the people of the
state;
(12) To accept and use for the benefit of the state, for the benefit of the health of the people of this state, any gift or devise of any property or thing which is lawfully given: Provided, That if any gift is for a specific purpose or for a particular state hospital or facility, it shall be used as specified. Any profit which may arise from any such gift or devise of any property or thing shall be deposited in a special revenue fund with the state treasurer and shall be used only as specified by the donor or donors;

(13) To acquire by condemnation or otherwise any interest, right, privilege, land or improvement and hold title thereto, for the use or benefit of the state or a state hospital or facility, and, by and with the consent of the governor, to sell, exchange or otherwise convey any interest, right, privilege, land or improvement acquired or held by the state, state hospital or state facility and deposit the proceeds from such sale, exchange or other conveyance into the hospital services revenue account. Any condemnation proceedings shall be conducted pursuant to chapter fifty-four of this code;

(14) To inspect and enforce rules and regulations to control the sanitary conditions of and license all institutions and health care facilities as set forth in this chapter, including, but not limited to, schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(15) To make inspections, conduct hearings, and to enforce the rules and regulations of the board concerning occupational and industrial health hazards, the sanitary condition of streams, sources of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel connected with such supplies, facilities or systems without regard to whether they are publicly or privately owned; and to make inspections, conduct hearings and enforce the rules and regulations
of the board concerning the design of chlorination and filtration facilities and swimming pools;

(16) To reorganize the functions and subdivisions of the division of health, structuring all functions previously assigned to the board of health, department of health, department of mental health, and otherwise assigned to the division of health by this chapter, to the end of establishing the most efficient and economic delivery of health services in accord with the purposes of this chapter; to achieve such goal the director shall establish such subdivisions, and delegate and assign such responsibilities and functions as he deems necessary to accomplish such reorganization;

(17) To direct and supervise the provision of dental services in all state institutions;

(18) To provide for, except as otherwise specified herein, a comprehensive system of community mental health and mental retardation supportive services to the end of preventing the unnecessary institutionalization of persons and promoting the community placement of persons presently residing in mental health and mental retardation facilities and other institutions and for the planning of the provisions of comprehensive mental health and mental retardation services throughout the state;

(19) To provide in accordance with this subdivision and the definitions and other provisions of article one-a, chapter twenty-seven of the code, for a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the cause and prevention of alcoholism and drug abuse; for the training and employment of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public concerning alcoholism and drug abuse;

(20) To provide in accordance with this subdivision for a program for the care, treatment and rehabilitation of the parents of sudden infant death syndrome victims; for the training and employment of personnel to provide the requisite rehabilitation of parents of sudden infant
death syndrome victims; for the education of the public concerning sudden infant death syndrome; for the responsibility of reporting to the Legislature on a quarterly basis the incidence of sudden infant death syndrome cases occurring in West Virginia; for the education of police, employees and volunteers of all emergency services concerning sudden infant death syndrome; for the state sudden infant death syndrome advisory council to develop regional family support groups to provide peer support to families of sudden infant death syndrome victims; and for requesting appropriation of funds in both federal and state budgets to fund the sudden infant death syndrome program;

(21) To exercise all other powers delegated to the division by this chapter or otherwise in this code, to enforce all health laws and the rules and regulations promulgated by the board, and to pursue all other activities necessary and incident to the authority and area of concern entrusted to the division or director; and

(22) To provide to the Legislature, after approval by the secretary of the department of health and human resources, a report on the long term plans for state hospitals named in article two, chapter twenty-seven of this code and the health facilities named in chapter twenty-six of this code on or before the fifteenth day of January, one thousand nine hundred ninety-one, and annually updated thereafter.

CHAPTER 92

(Com. Sub. for H. B. 4660—By Delegates White and B. Hatfield)

[Passed March 10, 1990: in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to authorizing the administrator of the division of health to charge for services rendered; creating a special revolving fund for moneys
received; allowing the administrator to authorize county
or municipal boards of health to charge for services; and
directing the administrator to promulgate rules estab­
lishing the fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DIVISION OF HEALTH.

§16-1-21. Fees for services; health services fund.

(a) Notwithstanding any other provisions of this
chapter, the administrator of the division of health may
assess and charge reasonable fees for the provision of
services provided by the division of health: Provided,
That no individual may be denied health care services
because of the inability of the individual to pay for
services when services are provided to similarly situated
individuals who have the ability to pay for them.
Payments of fees shall be deposited into a special
reversing fund in the state treasury.

(b) Any balance including accrued interest in the
special reversing fund at the end of any fiscal year shall
not revert to the general revenue fund but shall remain
in the special reversing fund for use by the administra­
tor of the division of health for funding health programs
in the ensuing fiscal years.

(c) The administrator of the division of health may
authorize reasonable fees for the provision of services by
county or municipal boards of health as created in
article two or article two-a of this chapter: Provided,
That no individual may be denied health care services
because of the inability of the individual to pay for
services when services are provided to similarly situated
individuals who have the ability to pay for them.
Payments of fees shall be deposited into the local board
of health account for use by the local board of health
for funding health programs. The fees established will
be created on a sliding fee basis determined by an
individual's ability to pay: Provided, however, That the board of health may submit a request through the administrator for third party reimbursement where such request is appropriate: Provided further, That boards of health which establish such fees shall annually submit a schedule of fees, a sliding fee scale and an accounting of amounts collected to the administrator of the division of health for approval on an annual basis.

(d) The administrator of the division of health shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code, setting forth the fees established, assessed, charged, authorized, or approved by the administrator.

CHAPTER 93
(H. B. 4230—By Delegates White and Warner)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the certificate of need program; restricting certificate of need exemption for private office practice for certain medical technologies; providing the health care cost review authority shall adopt rules on what technology can be exempted from the certificate of need program; requiring the health care cost review authority to annually review existing technologies to determine if shared services exemptions should be expanded.

Be it enacted by the Legislature of West Virginia:

That sections two and four, article two-d, 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 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.
§16-2D-4. Exemptions from certificate of need program.
§16-2D-2. Definitions.

1 As used in this article, unless otherwise indicated by the context:

2 (a) "Affected person" means:

3 (1) The applicant;

4 (2) An agency or organization representing consumers;

5 (3) Any individual residing within the geographic area served or to be served by the applicant;

6 (4) Any individual who regularly uses the health care facilities within that geographic area;

7 (5) The health care facilities which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

8 (6) The health care facilities which, prior to receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future;

9 (7) Third party payers who reimburse health care facilities similar to those proposed for services;

10 (8) Any agency which establishes rates for health care facilities similar to those proposed; or

11 (9) Organizations representing health care providers.

(b) "Ambulatory health care facility" means a facility which is free-standing and not physically attached to a health care facility and which provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. This definition does not include the private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired,
offered or developed: Provided, however, That such exemption from review of private office practice shall not be construed to include certain health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four, of this article.

(c) "Ambulatory surgical facility" means a facility which is free-standing and not physically attached to a health care facility and which provides surgical treatment to patients not requiring hospitalization. This definition does not include the private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, That such exemption from review of private office practice shall not be construed to include certain health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four, of this article.

(d) "Applicant" means: (1) The governing body or the person proposing a new institutional health service who is, or will be, the health care facility licensee wherein the new institutional health service is proposed to be located, and (2) in the case of a proposed new institutional health service not to be located in a licensed health care facility, the governing body or the person proposing to provide such new institutional health service. Incorporators or promoters who will not constitute the governing body or persons responsible for the new institutional health service may not be an applicant.

(e) "Bed capacity" means the number of beds for which a license is issued to a health care facility, or, if a facility is unlicensed, the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards.
(f) "Capital expenditure" means an expenditure:

(1) Made by or on behalf of a health care facility; and

(2) (A) Which (i) under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and (B) which (i) exceeds the expenditure minimum, or (ii) is a substantial change to the bed capacity of the facility with respect to which the expenditure is made, or (iii) is a substantial change to the services of such facility. For purposes of part (i), subparagraph (B), subdivision (2) of this definition, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in subparagraph (B), subdivision (2) of this definition is made shall be included in determining if such expenditure exceeds the expenditure minimum.

Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review shall be considered capital expenditures, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such subdivisions if a transfer of the equipment or facilities at fair market value would be subject to review. A series of expenditures, each less than the expenditure minimum, which when taken together are in excess of the expenditure minimum, may be determined by the state agency to be a single capital expenditure subject to review. In making its determination, the state agency shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; whether the expenditures are to be made over a two-year period and are directed towards the accomplishment of a single goal within the health care facility's long-range plan; or, whether the expenditures are to be made within a two-year period within a single depart-
ment such that they will constitute a significant modernization of the department.

(g) "Expenditure minimum" means one million dollars for the twelve-month period beginning the first day of October, one thousand nine hundred eighty-seven. For each twelve-month period thereafter, the state agency may, by regulations adopted pursuant to section eight of this article, adjust the expenditure minimum to reflect the impact of inflation.

(h) "Health," used as a term, includes physical and mental health.

(i) "Health care facility" is defined as including hospitals, skilled nursing facilities, kidney disease treatment centers, including free-standing hemodialysis units, intermediate care facilities, ambulatory health care facilities, ambulatory surgical facilities, home health agencies, rehabilitation facilities and health maintenance organizations; community mental health and mental retardation facilities, whether under public or private ownership, or as a profit or nonprofit organization and whether or not licensed or required to be licensed in whole or in part by the state. For purposes of this definition, "community mental health and mental retardation facility" means a private facility which provides such comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient and consultation and education for individuals with mental illness, mental retardation or drug or alcohol addiction.

(j) "Health care provider" means a person, partnership, corporation, facility or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual's medical care, treatment or confinement.

(k) "Health maintenance organization" means a public or private organization, organized under the laws of this state, which:

(1) Is a qualified health maintenance organization
under Section 1310(d) of the Public Health Service Act, as amended, Title 42 United States Code Section 300e-9(d); or

(2) (A) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services and out-of-area coverage; and

(B) Is compensated except for copayments for the provision of the basic health care services listed in subparagraph (2)(A), subdivision (k) of this definition to enrolled participants on a predetermined periodic rate basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent or kind of health service actually provided; and

(C) Provides physicians‘ services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(l) “Health services” means clinically related preventive, diagnostic, treatment or rehabilitative services, including alcohol, drug abuse and mental health services.

(m) “Home health agency” is an organization primarily engaged in providing directly or through contract arrangements, professional nursing services, home health aide services, and other therapeutic and related services, including, but not limited to, physical, speech and occupational therapy and nutritional and medical social services to persons in their place of residence on a part-time or intermittent basis.

(n) “Hospital” means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment, and care of
injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. This term also includes psychiatric and tuberculosis hospitals.

(o) "Intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition require health-related care and services above the level of room and board.

(p) "Long-range plan" means a document formally adopted by the legally constituted governing body of an existing health care facility or by a person proposing a new institutional health service. Each long-range plan shall consist of the information required by the state agency in regulations adopted pursuant to section eight of this article.

(q) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and which costs in excess of seven hundred fifty thousand dollars, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven of Section 1861(s) of such act, Title 42 United States Code Sections 1395x (10) and (11). In determining whether medical equipment costs more than seven hundred fifty thousand dollars, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

(r) "Medically underserved population" means the
population of an urban or rural area designated by the state agency as an area with a shortage of personal health services or a population having a shortage of such services, after taking into account unusual local conditions which are a barrier to accessibility or availability of such services. Such designation shall be in regulations adopted by the state agency pursuant to section eight of this article, and the population so designated may include the state's medically underserved population designated by the Federal Secretary of Health and Human Services under Section 330(b)(3) of the Public Health Service Act, as amended, Title 42 United States Code Section 254(b)(3).

(s) "New institutional health service" means such service as described in section three of this article.

(t) "Offer" when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(u) "Person" means an individual, trust, estate, partnership, committee, corporation, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

(v) "Physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state.

(w) "Proposed new institutional health service" means such service as described in section three of this article.

(x) "Psychiatric hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(y) "Rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons.
through an integrated program of medical and other
services which are provided under competent profes-
sional supervision.

(z) "Review agency" means an agency of the state,
designated by the governor as the agency for the review
of state agency decisions.

(aa) "Skilled nursing facility" means an institution or
a distinct part of an institution which is primarily
engaged in providing to inpatients skilled nursing care
and related services for patients who require medical or
nursing care, or rehabilitation services for the rehabil-
itation of injured, disabled or sick persons.

(bb) "State agency" means the health care cost review
authority created, established, and continued pursuant
to article twenty-nine-b of this chapter.

(cc) "State health plan" means the document approved
by the governor after preparation by the former
statewide health coordinating council, or that document
as approved by the governor after amendment by the
health care planning council.

(dd) "Health care planning council" means the body
established by section five-a of this article to participate
in the preparation and amendment of the state health
plan and to advise the state agency.

(ee) "Substantial change to the bed capacity" of a
health care facility means a change, with which a
capital expenditure is associated, in any two-year period
of ten or more beds or more than ten percent, whichever
is less, of the bed capacity of such facility that increases
or decreases the bed capacity, or relocates beds from one
physical facility or site to another, but does not include
a change by which a health care facility reassigns
existing beds as swing beds between acute care and
long-term care categories. A series of changes to the bed
capacity of a health care facility in any two-year period,
each less than ten beds or ten percent of the bed capacity
of such facility, but which when taken together comprise
ten or more beds or more than ten percent of the bed
capacity of such facility, whichever is less, is a substan-
tial change to the bed capacity.
(ff) "Substantial change to the health services" of a health care facility means the addition of a health service which is offered by or on behalf of the health care facility and which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service is first offered, or the termination of a health service which was offered by or on behalf of the facility, but does not include the providing of hospice care, ambulance service, wellness centers or programs, adult day care, or respite care by acute care facilities.

(gg) "To develop," when used in connection with health services, means to undertake those activities which upon their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, in relation to the offering of such a service.

§16-2D-4. Exemptions from certificate of need program.

(a) Except as provided in subdivision (h), section three of this article, nothing in this article or the rules and regulations adopted pursuant to the provisions of this article may be construed to authorize the licensure, supervision, regulation or control in any manner of: (1) Private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, That such exemption from review of private office practice shall not be construed to include the acquisition, offering or development of one or more health services, including ambulatory surgical facilities or centers, lithotripsy, magnetic resonance imaging and radiation therapy by one or more health professionals. The state agency shall adopt rules pursuant to section eight of this article which specify the health services acquired, offered or developed by health professionals which are subject to
provided further, That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours; (3) establishments, such as motels, hotels and boardinghouses, which provide medical, nursing personnel and health related services; and (4) the remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

(b) (1) A certificate of need is not required for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provisions of an inpatient institutional health service, if with respect to such offering, acquisition or obligation, the state agency has, upon application under subdivision (2), subsection (b) of this section, granted an exemption to:

(A) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination;

(B) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the
service area of the organization or service areas of the
organizations in the combination, an enrollment of at
least fifty thousand individuals, (iii) the facility is or will
be geographically located so that the service will be
reasonably accessible to such enrolled individuals, and
(iv) at least seventy-five percent of the patients who can
reasonably be expected to receive the institutional
health service will be individuals enrolled with such
organization or organizations in the combination; or

(C) A health care facility, or portion thereof, if (i) the
facility is or will be leased by a health maintenance
organization or combination of health maintenance
organizations which has, in the service area of the
organization or the service areas of the organizations in
the combination, an enrollment of at least fifty thousand
individuals and on the date the application is submitted
under subdivision (2), subsection (b) of this section, at
least fifteen years remain in the term of the lease, (ii)
the facility is or will be geographically located so that
the service will be reasonably accessible to such enrolled
individuals, and (iii) at least seventy-five percent of the
patients who can reasonably be expected to receive the
new institutional health service will be individuals
enrolled with such organization.

(2) (A) A health maintenance organization, combina-
tion of health maintenance organizations, or other health
care facility is not exempt under subdivision (1),
subsection (b) of this section from obtaining a certificate
of need unless:

(i) It has submitted, at such time and in such form
and manner as the state agency shall prescribe, an
application for such exemption to the state agency;

(ii) The application contains such information respect-
ing the organization, combination or facility and the
proposed offering, acquisition or obligation as the state
agency may require to determine if the organization or
combination meets the requirements of subdivision (1),
subsection (b) of this section or the facility meets or will
meet such requirements; and
(iii) The state agency approves such application.

(B) The state agency shall approve an application submitted under subparagraph (A), subdivision (2), subsection (b) of this section, if it determines that the applicable requirements of subdivision (1), subsection (b) of this section, are met or will be met on the date the proposed activity for which an exemption was requested will be undertaken.

(3) A health care facility, or any part thereof, or medical equipment with respect to which an exemption was granted under subdivision (1), subsection (b) of this section, may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired and a health care facility described in subparagraph (C), subdivision (1), subsection (b) of this section, which was granted an exemption under subdivision (1), subsection (b) of this section, may not be used by any person other than the lessee described in subparagraph (C), subdivision (1), subsection (b) of this section, unless:

(A) The state agency issues a certificate of need approving the sale, lease, acquisition or use; or

(B) The state agency determines, upon application, that the entity to which the facility or equipment is proposed to be sold or leased, which intends to acquire the controlling interest in or to use the facility is:

(i) A health maintenance organization or a combination of health maintenance organizations which meets the enrollment requirements of part (i), subparagraph (A), subdivision (1), subsection (b) of this section, and with respect to such facility or equipment, the entity meets the accessibility and patient enrollment requirements of parts (ii) and (iii), subparagraph (A), subdivision (1), subsection (b) of this section; or

(ii) A health care facility which meets the inpatient, enrollment and accessibility requirements of parts (i), (ii) and (iii), subparagraph (B), subdivision (1), subsection (b) of this section and with respect to its patients meets the enrollment requirements of part (iv), subpar-
aph (B), subdivision (1), subsection (b) of this section.

(4) In the case of a health maintenance organization or an ambulatory care facility or health care facility which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the certificate of need requirements apply only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services and then only to the extent that such offering, acquisition or obligation is not exempt under subdivision (1), subsection (b) of this section.

(5) The state agency shall establish the period within which approval or disapproval by the state agency of applications for exemptions under subdivision (1), subsection (b) of this section, shall be made.

(c) (1) A health care facility is not required to obtain a certificate of need for the acquisition of major medical equipment to be used solely for research, the addition of health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research if the health care facility provides the notice required in subdivision (2), subsection (c) of this section, and the state agency does not find, within sixty days after it receives such notice, that the acquisition, offering or obligation will, or will have the effect to:

(A) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

(B) Result in a substantial change to the bed capacity of the facility; or

(C) Result in a substantial change to the health services of the facility.

(2) Before a health care facility acquires major medical equipment to be used solely for research, offers a health service solely for research, or obligates a capital
expenditure solely for research, such health care facility shall notify in writing the state agency of such facility's intent and the use to be made of such medical equipment, health service or capital expenditure.

(3) If major medical equipment is acquired, a health service is offered, or a capital expenditure is obligated and a certificate of need is not required for such acquisition, offering or obligation as provided in subdivision (1), subsection (c) of this section, such equipment or service or equipment or facilities acquired through the obligation of such capital expenditure may not be used in such a manner as to have the effect or to make a change described in subparagraphs (A), (B) and (C), subdivision (1), subsection (c) of this section unless the state agency issues a certificate of need approving such use.

(4) For purposes of this subsection, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program.

d) (1) The state agency may adopt regulations pursuant to section eight of this article to specify the circumstances under which a certificate of need may not be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility: Provided, That a certificate of need shall be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility if:

(A) The notice required by subdivision (2), subsection (d) of this section is not filed in accordance with that subdivision with respect to such acquisition; or (B) the state agency finds, within thirty days after the date it receives a notice in accordance with subdivision (2), subsection (d) of this section, with respect to such acquisition, that the services or bed capacity of the facility will be changed by reason of said acquisition.

(2) Before any person enters into a contractual arrangement to acquire an existing health care facility,
such person shall notify the state agency of his or her
intent to acquire the facility and of the services to be
offered in the facility and its bed capacity. Such notice
shall be made in writing and shall be made at least
thirty days before contractual arrangements are entered
into to acquire the facility with respect to which the
notice is given. The notice shall contain all information
the state agency requires in accordance with subsections
(e) and (s), section seven of this article.

(e) The state agency shall adopt regulations, pursuant
to section eight of this article, wherein criteria are
established to exempt from review the addition of
certain health services, not associated with a capital
expenditure, that are projected to entail annual operat­
ing costs of less than the expenditure minimum for
annual operating costs. For purposes of this subsection,
“expenditure minimum for annual operating costs”
means five hundred thousand dollars for the twelve­
month period beginning the first day of October, one
thousand nine hundred eighty-five, and for each twelve­
month period thereafter, the state agency may, by
regulations adopted pursuant to section eight of this
article, adjust the expenditure minimum for annual
operating costs to reflect the impact of inflation.

(f) The state agency may adopt regulations pursuant
to section eight of this article to specify the circumstan­
ces under which and the procedures by which a
certificate of need may not be required for the obligation
of a capital expenditure to acquire, either by purchase
or under lease or comparable arrangement, major
medical equipment which merely replaces medical
equipment which is already owned by the health care
facility and which has become outdated, worn-out or
obsolete.

(g) The state agency may adopt regulations pursuant
to section eight of this article to specify the circumstan­
ces under which and the procedures by which a
certificate of need may not be required for the obligation
of a capital expenditure in excess of the expenditure
minimum for certain items not directly related to the
provision of health services. The state agency shall
specify the types of items in the regulations which may be so exempted from review.

(h) The state agency shall adopt rules within ninety days of the effective date of the amendment of this section in the year one thousand nine hundred ninety pursuant to section eight of this article to specify the circumstances under which and the procedures by which a certificate of need may not be required for shared services between two or more acute care facilities providing services made available through existing technology that can reasonably be mobile. The state agency shall specify the types of items in the regulations and under what circumstances mobile MRI and mobile lithotripsy may be so exempted from review. In no case, however, will mobile cardiac catheterization be exempted from certificate of need review. In addition, if the shared services mobile unit proves less cost effective than a fixed unit, the acute care facility will not be exempted from certificate of need review.

On a yearly basis, the state agency shall review existing technologies to determine if other shared services should be included under this exemption.

(i) Nothing in this article shall be construed to require the filing of a certificate of need application for any expenditure, health service, or change in health service which is exempt from review under this article. However, the state agency may promulgate rules and regulations pursuant to section eight of this article to require the filing of a notice with the state agency by a health care facility that proposes to make such an expenditure, initiate a health service, or effect a change in a health service for which the health care facility claims an exemption from review. The state agency shall, within ten days of a receipt of such notice, make one of the following responses:

(1) Accept the claim of exemption;

(2) Require the health care facility to furnish the state agency with additional information;

(3) Reject the claim of exemption; or
Determine that a certificate of need application is necessary for a review of the proposed expenditure, new health service, or change in a health service in order to determine if the claim of exemption may be upheld:

Provided, That when a new health service is proposed to be developed, the state agency shall, within the ten days of receipt of the required notice, determine whether or not economic and geographic factors within the geographic area of the proposed addition to service are such that the proposed new health service will be offered in competition with other health care facilities providing the same or similar service. In the event that an affirmative determination is made on the issue of competition, then the state agency shall require a certificate of need application for the proposed new health service.

CHAPTER 94
(H. B. 4820—By Delegates White and S. Cook)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the state health planning and development agency.

Be it enacted by the Legislature of West Virginia:

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

§16-2D-5. Powers and duties of state health planning and development agency.

(a) The state agency is hereby empowered to administer the certificate of need program as provided by this article.

(b) The state agency shall cooperate with the health care planning council in developing rules and regula-
tions for the certificate of need program to the extent appropriate for the achievement of efficiency in their reviews and consistency in criteria for such reviews.

(c) The state agency may seek advice and assistance of other persons, organizations, and other state agencies in the performance of the state agency's responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of such services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of such services.

(f) The state agency is hereby empowered to order a moratorium upon the processing of an application or applications for the acquisition of major medical equipment filed pursuant to section three of this article and considered by the agency to be new medical technology, when criteria and guidelines for evaluating the need for such new medical technology have not yet been adopted. Such moratoriums shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the new medical technology affected by the moratorium, or ninety days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and affected applications shall be processed pursuant to section six of this article.

(g) Notwithstanding the provisions of section seven of
this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request, or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved, or the amount of capital expenditure involved. The state agency shall implement this subsection by filing procedural rules pursuant to chapter twenty-nine-a of this code. The fees charged shall be deposited into a special fund known as the certificate of need program fund to be expended for the purposes of this article.

(h) No additional intermediate care facility/skilled nursing facility (ICF/SNF) nursing home beds shall be granted a certificate of need, except for applicants which have filed letters of intent or applications for certificates of need for such facilities prior to the fifteenth day of March, one thousand nine hundred eighty-seven, and except in the case of facilities designed to replace existing beds in unsafe or substandard existing facilities.

(i) No additional intermediate care facility for the mentally retarded (ICF/MR) beds shall be granted a certificate of need, except that prohibition does not apply to ICF/MR beds approved under the Kanawha County circuit court order of the third day of August, one thousand nine hundred eighty-nine, civil action number MISC-81-585 issued in the case of E. H. v. Matin, 168 W.Va. 248, 284 S.E.2d 232 (1981), and does not apply to existing ICF/MR beds to be replaced, sold, leased, transferred, or operated under contract or other means.

(j) Notwithstanding the provisions of subsection (h), section five of this article, and, further, notwithstanding the provisions of subsection (d), section three of this article, an existing acute care hospital with no skilled nursing beds may apply to the health care cost review authority for a certificate of need to convert acute care beds to skilled nursing beds provided the proposed skilled beds are medicare certified only. On a statewide
basis a maximum of one hundred acute care beds may be converted to skilled beds which are medicare certified only pursuant to this subsection. The health care cost review authority shall adopt rules to implement this subsection which shall include:

(1) A requirement that the one hundred beds be distributed statewide on a regional basis. The agency shall determine the hospitals to be included in each region.

(2) There shall be a minimum of ten beds and a maximum of twenty-five beds in each approved unit.

(3) In converting beds, the hospital must convert one acute care bed into one medicare certified only skilled nursing bed.

(4) All acute care beds converted shall be permanently deleted from the hospital's acute care bed complement and the hospital may not thereafter add by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (d), section three of this article for which purposes such an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in subsection (ee), section two of this article.

(5) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds created under this subsection shall be located in distinct-part, long-term care units.

(6) The hospital must demonstrate a need for the project.

(7) The hospital must use existing space for the medicare certified only skilled nursing beds. Under no circumstances shall the hospital construct, lease or acquire additional space for purposes of this subsection.

(8) The hospital must notify the acute care patient, prior to discharge, of facilities with skilled nursing beds
which are located in or near the patient's county of residence.

Nothing in this subsection shall negatively affect the rights of inspection and certification which are otherwise required by federal law or regulations or by this code of duly adopted regulations of an authorized state entity.

(k) The provisions of this article are severable and if any provision, section or part thereby shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any other remaining provisions contained herein.

CHAPTER 95

(S. B. 610—Originating in the Senate Committee on the Judiciary)

[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article twenty-nine, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revising methods by which health care records are furnished to patients; and limiting copying fees.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article twenty-nine, 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 29. HEALTH CARE RECORDS.

§16-29-1. Copies of health care records to be furnished to patients.
§16-29-2. Reasonable expenses to be reimbursed.

§16-29-1. Copies of health care records to be furnished to patients.

Any licensed, certified or registered health care
provider so licensed, certified or registered under the
laws of this state shall, upon the written request of a
patient, his authorized agent or authorized representa-
tive, within a reasonable time, furnish a copy, as
requested, of all or a portion of the patient's record to
the patient, his authorized agent or authorized representa-
tive subject to the following exceptions:

(a) In the case of a patient receiving treatment for
psychiatric or psychological problems, a summary of the
record shall be made available to the patient, his
authorized agent or authorized representative following
termination of the treatment program.

(b) Nothing in this article shall be construed to
require a health care provider responsible for diagnosis,
treatment or administering health care services in the
case of minors for birth control, prenatal care, drug
rehabilitation or related services, or venereal disease
according to any provision of the code, to release patient
records of such diagnosis, treatment or provision of
health care as aforesaid to a parent or guardian, without
prior written consent therefor from the patient, nor
shall anything in this article be construed to apply to
persons regulated under the provisions of chapter
eighteen of this code or the rules and regulations
established thereunder.

(c) The furnishing of a copy, as requested, of the
reports of X-ray examinations, electrocardiograms and
other diagnostic procedures shall be deemed to comply
with the provisions of this article.

(d) This article shall not apply to records subpoenaed
or otherwise requested through court process.

(e) The provisions of this article may be enforced by
a patient, authorized agent or authorized representative,
and any health care provider found to be in violation of
this article shall pay any attorney fees and costs,
including court costs incurred in the course of such
enforcement.

(f) Nothing in this article shall be construed to apply
to health care records maintained by health care
providers governed by the AIDS-related medical testing
and records confidentiality act under the provisions of
article three-c of this chapter.

§16-29-2. Reasonable expenses to be reimbursed.
1 The provider shall be reimbursed by the person
2 requesting in writing a copy of such records at the time
3 of delivery for all reasonable expenses incurred in
4 complying with this article. However, such cost shall not
5 exceed seventy-five cents per page for the copying of any
6 such record or records which have already been reduced
7 to written form.

CHAPTER 96
(H. B. 4128—By Delegate White)

[Passed March 6, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article
twenty-nine-c, chapter sixteen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to changing the termination date of
the task force on uncompensated health care and
medicaid expenditures.

Be it enacted by the Legislature of West Virginia:

That sections four and five, article twenty-nine-c, chapter
sixteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, be amended and reenacted
to read as follows:

ARTICLE 29C. INDIGENT CARE.

§16-29C-4. Legislative study; appointment of members; expenses; reports;
termination.

§16-29C-5. Effective date and termination date.

§16-29C-4. Legislative study; appointment of members;
expenses; reports; termination.
1 Not later than the first day of June, one thousand nine
2 hundred eighty-five, the president of the Senate and
3 speaker of the House of Delegates of the West Virginia
Legislature shall appoint a legislative task force on uncompensated health care and medicaid expenditures which shall meet, study and make recommendations as herein provided.

The task force shall be composed of three members of the Senate appointed by the president from the membership of the Senate standing committee on health and human resources, three members of the House of Delegates appointed by the speaker from the membership of the House of Delegates standing committee on health and human resources, and a number of citizens appointed jointly by the president and speaker which, in their discretion, adequately provides for the appropriate representation of the interests of the providers of health care services, the providers of health care insurance, state departments involved in the administration of health care and health care related programs and the citizens of this state. Of the members of the Senate appointed by the president, not more than two shall be from the same political party. Of the members of the House of Delegates appointed by the speaker, not more than two shall be from the same political party.

Members originally appointed to the task force shall serve for terms beginning on the date of appointment and ending on the thirtieth day of June, one thousand nine hundred ninety-three, unless sooner replaced by the president or the speaker as applicable, or, in the discretion of the president and the speaker, unless the work of the task force is completed or the need for the task force no longer exists prior to that date. The task force shall cease to exist on the thirtieth day of June, one thousand nine hundred ninety-three.

The task force shall meet on such dates as may be approved by the joint committee on government and finance for the regular meetings of its subcommittees unless approval is first obtained from the joint committee on government and finance for additional meetings. The task force shall conduct studies on the amount of funds expended by hospitals and other health care providers of this state for services to persons who are unable to pay for those services and for which they
receive no other form of reimbursement, the extent to
which persons in this state forego needed medical
services because of insufficient income and assets to pay
for those services, the extent to which the state is
maximizing available federal programs and moneys in
providing health care services to the citizens of this
state, the operation of the programs and funds created
by this article and the roles of the public, private and
private nonprofit sectors in providing health care
services to the citizens of this state. The task force shall
also study the state medicaid program in order to
determine if the state medicaid agency, as the payor of
last resort, is expending maximum effort to identify
alternate private insurance resources for medicaid
beneficiaries and shall study the feasibility and financial
impact upon the state of assuring increased access to
medicaid beneficiaries to primary health care in the
nonhospital setting by requiring enrollment in a
primary care clinic program, if available, and of the
establishment of different and lesser schedules of
payment for primary health services delivered by a
hospital emergency room as compared to the schedule
of payments for emergency room services of a true
medical emergency nature. On or before the first day
of January, one thousand nine hundred ninety-one, the
task force shall contact, review and study the indigent
care program of the health care access committee in the
state of Kentucky. The task force shall make such
recommendations as it deems appropriate to address the
needs identified in the studies.

The task force shall file an interim report with the
joint committee on government and finance and the
Legislature on the date of the last meeting of the joint
committee on government and finance prior to com-
cmencement of the regular session of the Legislature in
each year before the final report of the task force is filed
with the joint committee on government and finance and the
Legislature on or before the thirtieth day of June, one
thousand nine hundred ninety-three.

The members of the task force shall be entitled to
compensation at the rate authorized for members of the
86  Legislature participating in legislative interim meetings
87  and to reimbursement for reasonable and necessary
88  expenses actually incurred in attending meetings of the
89  task force, except that any employee of the state
90  appointed to the task force is not entitled to such
91  compensation. Funds necessary for the work of the task
92  force shall be paid from joint appropriations to the
93  Senate and House of Delegates but no such funds shall
94  be spent or obligations incurred in the conduct of such
95  work without prior approval of the joint committee on
96  government and finance.

§16-29C-5. Effective date and termination date.
1  This article shall be effective from passage, and,
2  notwithstanding the provisions of section four of this
3  article, shall terminate on the thirtieth day of June, one
4  thousand nine hundred ninety-three.

CHAPTER 97
(Com. Sub. for H. B. 4197—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk
By Request of the Executive)

[Passed March 1, 1990; 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 thirty-a, relating to the adoption of a medical
power of attorney act for the state of West Virginia.

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 thirty-a, to
read as follows:

ARTICLE 30A. MEDICAL POWER OF ATTORNEY.

§16-30A-2. Statement of purpose and legislative findings.
§16-30A-3. Medical power of attorney.
§16-30A-5. Successor representative.
§16-30A-6. Executing a medical power of attorney.
§16-30A-7. Nomination of committee or guardian.
§16-30A-10. Protection of health care providers.
§16-30A-11. Medical power of attorney to be made part of the medical records.
§16-30A-12. Right to receive information regarding proposed health care; medical records.
§16-30A-17. Reciprocity.


1 This article may be cited as the "Medical Power of Attorney Act."

§16-30A-2. Statement of purpose and legislative findings.

1 (a) Purpose.—It is the purpose of this article to ensure that a patient's right to self-determination in health care decisions be communicated and protected.

4 (b) Findings.—The Legislature hereby finds that:

5 (1) Common law tradition and the medical profession in general have traditionally recognized the right of a capable adult to accept or reject medical or surgical intervention affecting one's own medical condition;

9 (2) The application of recent advances in medical science and technology increasingly involves patients who are unconscious or otherwise unable to accept or reject medical or surgical treatment affecting their medical conditions;

14 (3) Such advances have also made it possible to prolong the dying process artificially through the use of intervening treatments or procedures which, in some cases, offer no medical hope of benefit;

18 (4) Capable adults should be encouraged to issue
advance directives designating their health care representatives so that in the event any such adult becomes unconscious or otherwise incapable of making health care decisions, the decisions may be made by others who are aware of such person's own wishes and values; and

(5) While providers of services have a duty to respect the known wishes of patients even in the absence of written directives, increased awareness of medical powers of attorney as a vehicle of patient decision-making would enhance and protect patient participation in health care decisions.

Therefore, in recognition of a patient's reasonable expectations of dignity and privacy, the Legislature hereby declares that all capable adults shall have the right to have their decisions for medical treatment or diagnostic procedures, including decisions regarding life-prolonging intervention, carried out by the use of advance directives when such adults are no longer able to communicate those decisions.

It is the intent of the Legislature to establish an effective method for use of advance directives, and it is also the intent of the Legislature that the courts should not be the usual venue for making such decisions. It is not the intent of the Legislature that the procedures described herein be the only means or form of advance directives concerning the provision of medical treatment or withholding thereof for persons who become incapable of communicating their desires relating thereto.

§16-30A-3. Medical power of attorney.

A medical power of attorney is a springing durable power of attorney by which any person (hereinafter the "principal") designates another person (hereinafter the "representative") in writing to make health care decisions for him or her in the event he or she is unable to do so. The instrument shall contain the following words, or words of like import, "THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHDRAW OR WITHHOLD INFORMED CONSENT TO MY OWN MEDICAL CARE." For purposes
of this article, "incapacity" or words of like import shall mean the inability, because of physical or mental impairment, to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner, as determined by two physicians or by one physician and one licensed psychologist, both of whom are licensed to practice in this state, and additionally, have examined the principal. The principal's attending physician shall be one of those who makes the determination required herein.


(a) The desires of a principal having capacity at all times supersede the effect of the medical power of attorney.

(b) In exercising the authority under the medical power of attorney, the representative has the duty to act consistently with the desires of the principal either as expressed in such medical power of attorney or which have otherwise been made known to such representative. If the principal's desires are unknown, then such representative shall act in the best interests of the principal.

(c) A medical power of attorney may include a statement of the personal values of the principal and specific instructions to the representative to cover particular circumstances.

(d) A representative shall have the authority to give, withhold or withdraw informed consent to the health care of the principal, which authority shall include, but not be limited to, the following, unless the principal expressly provides to the contrary:

(1) Making decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health care;

(2) Permitting or gaining access to all medical records;
27 (3) Acknowledging receipt of notifications of rights or responsibilities and any applicable rules of medical or health care facilities;

28 (4) Employing or discharging medical providers;

29 (5) Making decisions about measures for the relief of pain;

30 (6) Consenting to, refusing or withdrawing any and all medical treatment or diagnostic procedures, including, but not limited to, life-prolonging intervention when in the opinion of two physicians who have examined the principal, one of whom being the principal's attending physician, such life-prolonging intervention offers no medical hope of benefit;

31 (7) Making decisions about the gift or donation of a body organ or tissue;

32 (8) Enforcing a declaration made pursuant to the West Virginia Natural Death Act, as provided in chapter sixteen, article thirty of this code: Provided, That where the provisions of such a declaration and the special directives to the representative hereunder are in conflict, the provisions of the document executed later in time shall control or govern.

49 (e) If proceedings are initiated before a county commission for the appointment of a committee or guardian for the person of the principal subsequent to the execution of a medical power of attorney by the principal, the county commission shall, provided it has notice of a duly executed medical power of attorney, name the representative so designated as committee or guardian of the person for medical decision-making purposes, absent good cause shown against such designation.

§16-30A-5. Successor representative.

1 (a) The principal may appoint one or more successor representatives in the medical power of attorney in the event the original representative named therein is unable, unwilling or disqualified to serve. In such case, the successor representative shall succeed to all duties
and powers given to the original representative, unless
the principal expressly provides to the contrary.

(b) Should the representative and the successor
representative(s) named in the medical power of
attorney be unable, unwilling or disqualified to serve,
then the medical power of attorney shall lapse. However,
such lapse shall not prevent any advance directives,
statement of personal values or specific instructions
therein from serving as guidelines for the medical or
health care of the principal.

§16-30A-6. Executing a medical power of attorney.

(a) Any person eighteen years of age or older having
the capacity to do so may execute a medical power of
attorney. A medical power of attorney made pursuant
to this article shall be: (1) In writing; (2) signed by the
person making the medical power of attorney or by
another person in the principal's presence at the
principal's express direction; (3) dated; (4) signed in the
presence of two or more witnesses at least eighteen years
of age; and (5) acknowledged before a notary public.

(b) Each witness shall attest that he or she is not: (1)
The person who signed the medical power of attorney
on behalf of and at the direction of the principal; (2)
related to the principal by blood or marriage; (3)
entitled to any portion of the estate of the principal
according to the laws of intestate succession of the state
of the principal's domicile or under any will of the
principal or any codicil thereto: Provided, That the
validity of the medical power of attorney shall not be
affected when a witness at the time of witnessing the
same was unaware that he or she was named a bene-
\[...\]

(c) The following persons may not serve as a repre-
sentative or successor representative: (1) A treating
health care provider of the principal; (2) an employee
of a treating health care provider not related to the
§16-30A-7. Nomination of committee or guardian.

A principal may nominate, by a medical power of attorney, the committee or guardian of his person for consideration by the court or county commission if protective proceedings for the principal's person are thereafter commenced. The court or county commission shall make its appointment in accordance with the principal's most recent nomination in a medical power of attorney, except for good cause or disqualification.


If the principal is incapacitated at the time of any health care decision, a medical power of attorney executed in accordance with this article is presumed to be valid. For the purposes of this article, a physician or health care facility may presume, in the absence of actual notice to the contrary, that a principal who executed a medical power of attorney was of sound mind when it was executed. The fact that an individual executed a medical power of attorney is not an indication of the principal's incapacity. In addition, a physician or health care facility may presume, in the absence of actual notice to the contrary, that any witness who executed a medical power of attorney in accordance with this article was qualified to do so.


When acts are undertaken in good-faith reliance upon a medical power of attorney as prescribed herein, an affidavit given by a representative stating that he or she did not have, at the time of any exercise of such power, knowledge concerning any revocation thereof, shall be considered to be clear and convincing evidence of the validity of the power at that time. This section shall not affect any provision in a medical power of attorney for its termination by expiration of time or occurrence of any event other than express revocation by the principal.
§16-30A-10. Protection of health care providers.

(a) A physician, licensed health care professional, health facility or employee thereof shall not be subject to criminal or civil liability for good-faith compliance with or reliance upon the directions of the representative in accordance with this article.

(b) An attending physician who cannot or will not comply with or act in reliance upon the directions of the representative shall, in conjunction with the representative, cause the transfer of the principal to another physician who will comply with the directions of the representative. Transfer under such circumstances does not constitute abandonment of the principal.

§16-30A-11. Medical power of attorney to be made part of the medical records.

A physician or other health care provider who receives a copy of a medical power of attorney or the revocation thereof shall make it part of the principal's then current medical record.

§16-30A-12. Right to receive information regarding proposed health care; medical records.

Except to the extent the right is limited by a medical power of attorney, a representative designated to make health care decisions under a medical power of attorney has the same legal right as the principal to receive information, including information requiring a special release under applicable laws, regarding the proposed health care, to receive and review medical records, and to consent to the disclosure of medical records.


A medical power of attorney may be revoked at any time by the principal by any of the following methods:

(a) By destruction thereof, either by the principal or by some person in the principal's presence and at his or her direction;

(b) By written revocation, signed and dated by the
principal or other person acting at the direction of the principal. Such revocation shall become effective only upon communication thereof to the attending physician by the principal or by a person acting on behalf of the principal. The attending physician shall record in the patient’s medical record the time and date when he or she receives notification of the written revocation;

(c) By a verbal expression of the intent to revoke in the presence of a witness eighteen years of age or older who contemporaneously signs and dates a writing confirming such expression was made. Any verbal revocation shall become effective only upon communication of the revocation to the attending physician by the principal or by a person acting on behalf of the principal. The attending physician shall record, in the patient’s medical record, the time, date and place wherein he or she received such notification; or

(d) The grant of a final divorce decree shall act as an automatic revocation of the designation of the former spouse to act as a representative or successor representative.


(a) The compliance by a health care provider with any direction from a representative that results in the withholding or withdrawal of medical treatment or diagnostic procedures, including life-prolonging intervention, from a principal shall not be considered for any purpose homicide, suicide or assisting suicide. A representative’s refusal to give consent to, withdrawal or withholding of any such treatment or procedure pursuant to the authority granted by the principal shall not be considered for any purpose as homicide or assisting suicide.

(b) The making of a medical power of attorney pursuant to this article may not affect in any manner the sale, procurement or issuance of any policy of life insurance, nor may it modify the terms of any existing policy of life insurance. No policy of life insurance may be legally impaired or invalidated in any manner by the withholding or withdrawal of life-prolonging interven-

(a) Any durable power of attorney that was executed in accordance with the provisions of article four, chapter thirty-nine of this code prior to the effective date of this article and which expressly delegates to the attorney in fact named therein any health care decisions by and on behalf of the principal is hereby recognized as a valid grant of authority, as though it were executed in compliance with the provisions of this article.

(b) Subsequent to the effective date of this article, an instrument made in accordance with article four, chapter thirty-nine of this code and also in accordance with the terms of this article shall be effective to authorize the exercise of health care decision-making and other authority as provided in such instrument.

(c) This article creates no presumption concerning the intention of an individual who has not executed a medical power of attorney to consent to, refuse or withdraw any and all medical treatment or diagnostic procedures, including, but not limited to, life-prolonging intervention.


(a) Nothing in this article may be construed to condone, authorize or approve mercy killing or to permit any affirmative or deliberate act or omission to end a human life other than to permit the natural process of dying.

(b) Under no circumstances may the presence or absence of a medical power of attorney be used to deny a patient admission to a health care facility.

§16-30A-17. Reciprocity.

A durable power of attorney executed in another state is validly executed for purposes of this article if it is executed in compliance with the laws of this state or the laws of the state where executed and expressly delegates health care decisions.

1 A medical power of attorney shall be drafted in the following form or in such form which substantially complies with the requirements set forth herein. The provision of medical power of attorney forms substantially in compliance with this article by health care providers, medical practitioners, social workers, social service agencies, senior citizens centers, hospitals, nursing homes, personal care homes, community care facilities or any other similar person or group, without separate compensation, does not constitute the unauthorized practice of law within this state.

MEDICAL POWER OF ATTORNEY

Dated: ______________, 19____.

I, ________________________________________, (insert your name and address), hereby appoint ____________________________ (insert the name, address, area code and telephone number of the person you wish to designate as your representative) as my representative to act on my behalf to give, withhold or withdraw informed consent to health care decisions in the event that I am not able to do so myself. If my representative is unable, unwilling or disqualified to serve, then I appoint ______________ as my successor representative.

This appointment shall extend to (but not be limited to) decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health care. The representative appointed by this document is specifically authorized to act on my behalf to consent to, refuse or withdraw any and all medical treatment or diagnostic procedures, if my representative determines that I, if able to do so, would consent to, refuse or withdraw such treatment or procedures. Such authority shall include, but not be limited to, the withholding or withdrawal of life-prolonging intervention when in the opinion of two physicians who have examined me, one of whom is my attending physician, such life-prolonging intervention offers no medical hope of benefit.
I appoint this representative because I believe this person understands my wishes and values and will act to carry into effect the health care decisions that I would make if I were able to do so, and because I also believe that this person will act in my best interests when my wishes are unknown. It is my intent that my family, my physician and all legal authorities be bound by the decisions that are made by the representative appointed by this document, and it is my intent that these decisions should not be the subject of review by any health care provider, or administrative or judicial agency.

It is my intent that this document be legally binding and effective. In the event that the law does not recognize this document as legally binding and effective, it is my intent that this document be taken as a formal statement of my desire concerning the method by which any health care decisions should be made on my behalf during any period when I am unable to make such decisions.

In exercising the authority under this medical power of attorney, my representative shall act consistently with my special directives or limitations as stated below.

SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: (If none, write "none.")

________________________________________________________

________________________________________________________

________________________________________________________

THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITIVITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN MEDICAL CARE.

These directives shall supersede any directives made in any previously executed document concerning my health care.

X_______________________________________________

Signature of Principal
I did not sign the principal's signature above. I am at least eighteen years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal according to the laws of intestate succession of the state of the principal's domicile or to the best of my knowledge under any will of the principal or codicil thereto, or legally responsible for the costs of the principal's medical or other care. I am not the principal's attending physician, nor am I the representative or successor representative of the principal.

WITNESS:

DATE:

WITNESS:

DATE:

STATE OF ___________________,
COUNTY OF ________________, to-wit:

I, ____________________________, a Notary Public of said County, do certify that _______________, as principal, and ____________________________ and _______________, as witnesses, whose names are signed to the writing above bearing date on the _______ day of ____________, 19 ___, have this day acknowledged the same before me.

Given under my hand this ________________ day of ________________, 19 ___.

My commission expires: ____________________________

Notary Public


(a) The secretary of health and human resources, no
shall develop and implement a statewide educational effort to inform the public of the option to execute a medical power of attorney and of patients' rights to participate in and direct health care decisions.

(b) The secretary of health and human resources shall publish, and may revise from time to time, guidelines concerning the manner of execution and revocation of medical powers of attorney while a person is a patient in a health care facility. The guidelines shall (1) inform patients of their right to execute a medical power of attorney concerning their health care; (2) assure patients that their decision concerning the execution of a medical power of attorney will not be used to deny them admission to or continued stay at the health care facility; (3) inform patients of their right to revoke such medical power of attorney at any time; and (4) address such other matters as the secretary may consider appropriate.


The provisions of this article are severable and if any provision, section or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any other remaining provisions contained herein.

CHAPTER 98
(S. B. 466—By Senator Holliday)

[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of medicine and definitions permitting a designee of the director of health to be a member of the board and to act as its secretary.
Be it enacted by the Legislature of West Virginia:

That section four, article three, 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 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-4. Definitions.

As used in this article:

(1) "Board" means the West Virginia board of medicine established in section five of this article. Whenever any other provision of this code refers to the "medical licensing board of West Virginia", such reference shall be construed to mean and refer to the "West Virginia board of medicine" as created and established in this article.

(2) "Medical peer review committee" means a committee of, or appointed by, a state or local professional medical society, or a committee of, or appointed by, a medical staff of a licensed hospital, long-term care facility or other health care facility, or any health care peer review organization as defined in section one, article three-c of this chapter, or any other organization of professionals in this state formed pursuant to state or federal law and authorized to evaluate medical and health care services.

(3) "Practice of medicine and surgery" means the diagnosis or treatment of, or operation or prescription for, any human disease, pain, injury, deformity or other physical or mental condition.

(4) "Practice of podiatry" means the examination, diagnosis, treatment, prevention and care of conditions and functions of the human foot by medical, surgical and other scientific knowledge and methods; and medical and surgical treatment of warts and other dermatological lesions of the hand which similarly occur in the foot. When a podiatrist uses other than local anesthesia, in surgical treatment of the foot, such anesthesia must be administered by, or under the direction of, an anesthesiologist or certified nurse
anesthetist authorized under the state of West Virginia to administer anesthesia. A medical evaluation shall be made by a physician of every patient prior to the administration of other than local anesthesia.

(5) "State director of health" means the state director of health or his or her designee, which designee shall act as secretary of the board and shall carry out any and all responsibilities assigned in this article to the secretary of the board.

CHAPTER 99
(Com. Sub. for S. B. 338—By Senator Lucht)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers and authority of racing commission.

Be it enacted by the Legislature of West Virginia:

That section six, 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.


1 The racing commission shall have full jurisdiction over and shall supervise all horse race meetings, all dog race meetings and all persons involved in the holding or conducting of horse or dog race meetings, and, in this regard, it shall have plenary power and authority:

6 (1) To investigate applicants and determine the eligibility of such applicants for a license or permit or construction permit under the provisions of this article;

9 (2) To fix, from time to time, the annual fee to be paid to the racing commission for any permit required under the provisions of section two of this article;
(3) To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the racing commission under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(4) To register colors and assumed names and to fix, from time to time, the annual fee to be paid to the racing commission for any such registration;

(5) To fix and regulate the minimum purse to be offered during any horse or dog race meeting;

(6) To fix a minimum and a maximum number of horse races or dog races to be held on any respective racing day;

(7) To enter the office, horse racetrack, dog racetrack, kennel, facilities and other places of business of any licensee to determine whether the provisions of this article and its reasonable rules and regulations are being complied with, and for this purpose, the racing commission, its racing secretary, representatives and employees may visit, investigate and have free access to any such office, horse racetrack, dog racetrack, kennel, facilities and other places of business;

(8) To investigate alleged violations of the provisions of this article, its reasonable rules and regulations, orders and final decisions and to take appropriate disciplinary action against any licensee or permit holder or construction permit holder for the violation thereof or institute appropriate legal action for the enforcement thereof or take such disciplinary action and institute such legal action;

(9) By reasonable rules and regulations, to authorize stewards, starters and other racing officials to impose reasonable fines or other sanctions upon any person
connected with or involved in any horse or dog racing or any horse or dog race meeting; and to authorize stewards to rule off the grounds of any horse or dog racetrack any tout, bookmaker or other undesirable individual deemed inimical to the best interests of horse and dog racing or the pari-mutuel system of wagering in connection therewith;

(10) To require at any time the removal of any racing official or racing employee of any licensee, for the violation of any provision of this article, any reasonable rule and regulation of the racing commission or for any fraudulent practice;

(11) To acquire, establish, maintain and operate, or to provide by contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of conducting saliva, urine and other tests on the horse or dog or horses or dogs run or to be run in any horse or dog race meeting, and to purchase all equipment and supplies deemed necessary or desirable in connection with the acquisition, establishment, maintenance and operation of any such testing laboratory and related facilities and all such tests;

(12) To hold up, in any disputed horse or dog race, the payment of any purse, pending a final determination of the results thereof;

(13) To require each licensee to file an annual balance sheet and profit and loss statement pertaining to such licensee's horse or dog racing activities in this state, together with a list of each such licensee's stockholders or other persons having any beneficial interest in the horse or dog racing activities of such licensee;

(14) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records and other pertinent documents, and to administer oaths and affirmations to such witnesses, whenever, in the judgment of the racing commission, it is necessary to do so for the effective discharge of its duties under the provisions of this article;

(15) To keep accurate and complete records of its
proceedings and to certify the same as may be appropriate;

(16) To take such other action as may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules and regulations;

(17) To provide breeders' awards, purse supplements and moneys for capital improvements at racetracks in compliance with section thirteen-b of this article; and

(18) The racing commission shall, upon request of either party, mediate on site, all disputes existing between the racetrack licensees' located in this state and representatives of a majority of the horse owners and trainers licensed at the track, which threaten to disrupt any scheduled racing event or events. When any such request is made, the commission shall designate from among its members, one person to act as mediator in each such dispute that arises. Each opposing party involved in any dispute shall negotiate in good faith with the goal of reaching a fair and mutual resolution. The mediator may issue recommendations designed to assist each side toward reaching a fair compromise: Provided, That no owner or operator or any horse owner or trainer licensed at the track may be required to abide by any recommendation made by any mediator acting pursuant to this subsection.

The racing commission shall not interfere in the internal business or internal affairs of any licensee.

CHAPTER 100
(Com. Sub. for S. B. 270—By Senator Blatnik)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]
providing certain definitions; requiring commission's auditor or steward to preside at televised racing day; providing for tax on licensees for televised racing days; providing for deposit into purse fund, and making certain federal law controlling in determining intent.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.

(a) For the purposes of this section:

(1) “Televised racing day” means a day, assigned by the commission, at a licensed racetrack on which pari-mutuel betting is conducted on horse or dog races run at racetracks outside of the state which are broadcast by television at a licensed racetrack and which day or days have had the prior written approval of the representative of the majority of the owners and trainers who hold permits required by section two of this article; and

(2) “Host racing association” means any person who, pursuant to a license or other permission granted by the host state, conducts the horse or dog race subject to the interstate wager.

(b) A licensee conducting not less than two hundred twenty live racing dates for each horse or dog race meeting may, with the prior approval of the state racing commission, contract with any legal wagering entity in any other state to receive telecasts and accept wagers on races conducted by such legal wagering entity:

Provided, That a track licensed to conduct only horse racing may not receive telecasts of dog races, and a track licensed to conduct only dog racing may not receive telecasts of horse races other than nationally televised special events such as the Kentucky Derby, the
Preakness, the Belmont Stakes and not more than fifteen other special events deemed by the racing commission to be of national significance. The telecasts may be received and wagers accepted at any location authorized by the provisions of section twelve-a of this article. Such contract must receive the approval of the representative of the majority of the owners and trainers who hold permits required by section two of this article at the receiving racetrack.

(c) The commission may allow the licensee to commingle its wagering pools with the wagering pools of the host racing association. If the pools are commingled, the wagering at the licensee’s racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and be electronically linked with the equipment at the sending racetrack. Subject to the approval of the commission, the types of betting, licensee commissions and distribution of winnings on pari-mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack. Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with the law or rules governing the sending racetrack, and must be distributed in a manner agreed to between the licensee and the sending racetrack.

(d) The commission may assign televised racing days at any time. When a televised racing day is assigned, the commission shall assign either a steward or an auditor to preside over the televised races at the licensee racetrack.

(e) From the licensee commissions authorized by subsection (c) of this section, there is imposed and the licensee shall pay, for each televised racing day on which the total pari-mutuel pool exceeds fifty thousand dollars, the greater of either: (i) The total of the daily license tax and the pari-mutuel pools tax required by section ten of this article; or (ii) a daily license tax of five hundred dollars. For each televised racing day on which the total pari-mutuel pool is fifty thousand dollars or less the licensee shall pay a daily license tax of five hundred dollars. Payments of the tax imposed by this
(f) After deducting the tax required by subsection (e) of this section, the amount required to be paid under the terms of the contract with the legal wagering entity of another state and the cost of transmission, the horse racing association shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (b) (1), section nine of this article.

(g) The provisions of the "Federal Interstate Horse-racing Act of 1978", also known as Public Law 95-515, Section 3001-3007 of Title 15, U.S. Code, as amended, shall be controlling in determining the intent of this section.

CHAPTER 101

AN ACT to amend and reenact section fourteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing provisions regarding the reimbursement of capital costs for certain health care facilities financed by public bonded indebtedness and limiting the amount of reimbursement.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article five, 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 5. MISCELLANEOUS PROVISIONS.

§9-5-14. Medicaid program; health care facilities financed by bonds; rules regarding reimbursement of capital costs.

(a) The Legislature finds and declares that a number
of health care facilities have been financed by public bonded indebtedness, and as a result of policies, rules and standards which may be in conflict, the facilities and the health and welfare of those citizens served by such facilities are in jeopardy. The provisions of subsection (b) are enacted for the purpose of addressing this as a short-term solution. The provisions of subsection (d) are enacted for the purpose of further addressing such conflicting policies, rules and standards.

(b) As to any health care facility licensed under article five-c, chapter sixteen of this code, constructed after the first day of April, one thousand nine hundred eighty-one, and affected on or after that date by the reimbursement methodology implemented by the department regarding standard appraised value, beginning on the first day of April, one thousand nine hundred eighty-eight, and for a two-year period only, ending on the thirty-first day of March, one thousand nine hundred ninety, all in compliance with federal rules and regulations, the department shall reimburse such health care facilities no less than any actual annual capital costs, including, but not limited to, debt service, lease payments or costs of comparable financing arrangements incurred in connection with any capital expenditure approved pursuant to article two-d, chapter sixteen of this code or any rule promulgated thereunder or in conjunction with the financing of such capital expenditure pursuant to article two-c, chapter thirteen of this code, whichever is greater; and in no event, for the purpose of reimbursement of such capital costs, may the value of any health care facility licensed pursuant to article five-c, chapter sixteen of this code be deemed to be less than the greater of the aggregate principal amount of any public bond issue undertaken pursuant to the provisions of article two-c, chapter thirteen of this code or the maximum capital expenditure approved pursuant to article two-d, chapter sixteen of this code or any rule promulgated thereunder, and any appraisal made by the department in connection therewith shall include costs related to the financing of the bond issue or the maximum capital expenditure approved pursuant to article two-d, chapter sixteen of this code, as
applicable: Provided, That said values may be reduced by (A) any functional obsolescence which is determined and identified annually pursuant to any rule promulgated hereunder and (B) the pro rata share of such value which is attributable to capital expenditures incurred with respect to facilities which provide services which are not eligible for reimbursement under Title XIX of the social security act: Provided, however, That the department may not exceed the medicare upper payment limit for medicaid in making any reimbursement pursuant to this section.

As to any health care facility constructed after the first day of April, one thousand nine hundred eighty-one, and affected on or after that date by the reimbursement methodology implemented by the department regarding standard appraised value, with respect to reimbursement to the state by such health care facility arising from adjustment of projected rates, the department shall provide for the adjustment of projected rates based upon values which are consistent with the provisions of this section and based upon the actual occupancy experience of the health care facility during the projected rate period, all in compliance with federal rules and regulations.

(c) The medicaid payments that a long-term care facility would otherwise receive may not be reduced in any manner as a result of the operation of this section.

(d) For the rate setting cycle beginning on the first day of April, one thousand nine hundred ninety, and for a period ending on the first day of July, one thousand nine hundred ninety-two, the department shall reimburse health care facilities described in subsection (b), with sixty or more licensed beds, for actual annual capital costs in the manner prescribed in subsection (b): Provided, That the capital costs reimbursement attributable to subsection (b) of this section may not exceed the medicare upper payment limit based upon presumed occupancy of ninety percent or actual occupancy of the facility, whichever is greater: Provided, however, That any capital cost reimbursement attributable to the computation made pursuant to the provisions of this
subsection (d) shall not exceed the per patient day cost of capital as computed under the rules of the department, without reference to this section, plus six dollars per patient day. Requests for information from the department regarding reimbursement pursuant to this subsection (d) shall be completed and submitted to the department not later than sixty days subsequent to the receipt of the department’s request by the facility.

The department shall provide for the adjustment of projected rates for health care facilities described in subsection (b), with sixty or more licensed beds, in the manner prescribed in subsection (b).

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CHAPTER 102

(H. B. 4720—By Delegates Wilson and Pitarolo)

[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to prohibiting the department of commerce, labor and environmental resources from transferring authority from the division of commerce to the division of natural resources for Plum Orchard Lake, Pleasants Creek, Big Ditch Lake and Teeter Creek.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five-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 twelve-a, to read as follows:

ARTICLE 1. DIVISION OF COMMERCE.

§5B-1-12a. Certain hunting and fishing areas prohibited from transfer.

Notwithstanding the provisions of article two, chapter five-f the following state hunting and fishing areas may
not be transferred from the authority of the division of commerce:

(a) Plum Orchard Lake in Fayette County;
(b) Pleasants Creek in Taylor County;
(c) Big Ditch Lake in Webster County; and
(d) Teeter Creek in Barbour County.

CHAPTER 103
(S. B. 563—By Senator Parker)

[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of commerce, labor and environmental resources and incorporating Moncove Lake public hunting and fishing area as a state park to be named Moncove Lake State Park.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article one, 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 1. DIVISION OF COMMERCE.

*§5B-1-13. Division of parks and recreation; purpose; powers and duties generally.

1 The division of parks and recreation has within its jurisdiction and supervision:
2 (a) All state parks and state recreation areas, including all lodges, cabins, swimming pools, motorboating and all other recreational facilities therein, except the roads therein which, by reason of section one, article
four, chapter seventeen of this code, are transferred to
the state road system and to the responsibility of the
commissioner of highways with respect to the construc-
tion, reconstruction and maintenance of the roads or any
future roads for public usage on publicly owned lands
in future state parks, state forests and public hunting
and fishing areas;

(b) The authority and responsibility to do the neces-
sary cutting and planting of vegetation along road
rights-of-way in state parks and recreational areas;

(c) The administration of all laws and rules relating
to the establishment, development, protection, use and
enjoyment of all state parks and state recreational
facilities consistent with the provisions of this article;

(d) The Berkeley Springs sanitarium in Morgan
County shall be continued as a state recreational facility
under the jurisdiction and supervision of the department
of commerce, labor and environmental resources and
shall be managed, directed and controlled as prescribed
here in this article and in article one, chapter twenty
of this code.

The commissioner has all of the powers and authority
and shall perform all of the functions and duties with
regard to Berkeley Springs sanitarium as are necessary
to carry out the provisions of this article;

(e) The Washington Carver camp in Fayette County
subject to the jurisdiction and authority of the divi-
sion of culture and history as provided under section
thirteen, article one, chapter twenty-nine of this code
shall be managed by the commissioner as a state
recreational facility and a component of the state park
system;

(f) The improved recreational area of Camp Creek
State Forest in Mercer County, as delineated according
to section three, article one-a, chapter nineteen of this
code, is hereby renamed as the Camp Creek State Park
and under that name shall be managed as a state
recreational facility;

(g) The improved recreational area of Moncove Lake
812 HUNTING AND FISHING [Ch. 104

public hunting and fishing area, consisting of all improved recreational facilities, including all land between the lake and private property beginning at the main entrance on secondary route eight to the first stream on the southwest side of the improved recreational area, approximately two hundred feet southwest of the private property corner where it meets the Roxalia Springs trail, thence northwest to a stream and along this stream northward to and across the Diamond Hollow trail to the area boundary, thence continuing around area boundary to the lake shore, thence following the lake shore around the shoreline to meet the line drawn from the main entrance where the boundary begins. This area is hereby renamed as the Moncove Lake State Park and under that name shall be managed as a state recreational facility: Provided, That the boundary, as herein described, shall be plainly marked within ninety days of the effective date of this act; and

(h) The secretary of the department of commerce, labor and environmental resources shall be primarily responsible for the execution and administration of the provisions herein as an integral part of the parks and recreation program of the state and shall organize and staff the department for the orderly, efficient and economical accomplishment of these ends.

CHAPTER 104

(Com. Sub. for H. B. 4176—By Delegates Schoonover and Tribett)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article two, chapter twenty of the code West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the compensation paid to county officials and agents for the issuance of hunting, trapping and fishing licenses.

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.

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, so 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 at not less than one thousand dollars, 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 same for the purposes of resale.

After the thirtieth day of June, one thousand nine hundred ninety, 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 therefor in the later sections of 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 Class AB licenses.
CHAPTER 105

(Com. Sub. for H. B. 4097—By Delegate Love)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class A-1 small arms hunting licenses; allowing nonresident Class A-1 licenses; providing for a lifetime Class A-1 hunting license; requiring a fee for the issuance of a lifetime Class A-1 hunting license; and permitting clerks of county commissions to issue Class A-1 licenses.

Be it enacted by the Legislature of West Virginia:

That section forty-b, 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.

§20-2-40b. Class A-1 small arms hunting license.

1 Notwithstanding the provisions of section two, article seven, chapter sixty-one of this code, a Class A-1 license shall be a small arms hunting license. If a person is otherwise qualified, a Class A-1 license may be issued by the division, pursuant to rules and regulations promulgated by the director, which regulations shall include provisions for the establishment of a voluntary program available to citizens of the state pertaining to safety and proficiency in the use of a revolver or pistol, to a person twenty-one years of age or older who holds a valid resident or nonresident hunting license, or to a person who is a resident and sixty-five years of age or older, but a Class A-1 license shall never be issued to a person who has been convicted of a misdemeanor in any way associated with the use of firearms or dangerous weapons or who has been convicted of any felony.

A Class A-1 license shall entitle the licensee to hunt, as otherwise permitted by the provisions of this chapter, but only during small game and big game seasons as
established annually by the director, with either a revolver or pistol which has a barrel at least four inches in length. A Class A-1 license shall entitle the licensee to carry or have in his possession one, and only one, revolver or pistol when going to and from his home or residence and a place of hunting and while hunting in the place: Provided, That such Class A-1 license shall not be valid unless the licensee have in his possession a valid resident or nonresident hunting license or to a person who is a resident and sixty-five years of age or older: Provided, however, That at all times, when not actually hunting, the revolver or pistol shall be unloaded.

While hunting, the licensee shall carry the revolver or pistol outside of his person in an unconcealed and easily visible place. At all other times the revolver or pistol shall be cased or dismantled in a way to cause it not to operate. When being transported in a vehicle it shall be kept in a locked compartment of the vehicle which shall not be accessible from the inside of such vehicle.

The fee shall be five dollars for a Class A-1 license. All such fees collected shall be deposited in the state treasury and credited to the law-enforcement division of the division of natural resources. Such fees shall be paid out of the state treasury on order of the director and used solely for law-enforcement purposes.

For a fee of seventy-five dollars, a lifetime Class A-1 license may be issued to anyone otherwise qualified and holding a valid Class A or Class AB license issued for a lifetime or to a person who is a resident and sixty-five years of age or older. All fees collected for the issuance of a lifetime Class A-1 license shall be deposited in the state treasury and credited to the law-enforcement division of the division of natural resources. The fees collected shall be paid out of the state treasury on order of the director and used solely for law-enforcement purposes: Provided, That upon conviction of a misdemeanor in any way associated with the use of firearms or dangerous weapons or conviction of any felony, a lifetime Class A-1 licensee shall immediately surrender said license to the division of natural resources.
CHAPTER 106

(COM. SUB. FOR H. B. 4354—BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATE LOVE)

[Passed February 27, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-j, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class V resident and Class VV nonresident muzzle-loading deer hunting licenses; limitations removed; and specifying the bore diameter of thirty-eight one-hundredths inch as the minimum legal bore diameter permitted.

Be it enacted by the Legislature of West Virginia:

That section forty-six-j, 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.

§20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.

1 There shall be a special season of at least three days each year for the taking of deer with muzzle-loading firearms, either rifles or pistols, to be set at such time and to be of such duration as determined by the commission. For a minimum of two days during this season, deer of either sex may be taken with muzzle-loading firearms in all counties open for the taking of antlerless deer as provided in section forty-six-b of this article. Antlered deer only may be taken in all other counties open for the taking of deer with firearms.

11 Only single shot muzzle-loading firearms with iron sights having a bore diameter of no less than thirty-eight one-hundredths inch are legal firearms for the taking of deer during the special season provided herein.

15 The special season provided herein shall be concurrent with all other seasons designated for the taking of game.

17 Any person wishing to hunt for and kill deer during
the special muzzle-loading season must possess a valid Class V or Class VV license, except that this requirement does not apply to a resident of West Virginia who is not required to obtain a license or permit to hunt as provided in this chapter. A Class V license shall be a resident muzzle-loading deer hunting license. A Class VV license shall be a nonresident muzzle-loading deer hunting license. The licenses shall be issued in a form prescribed by the director, are in addition to a Class A, Class AB or Class E license and are valid only when accompanied thereby. The fee for the Class V license shall be five dollars. The fee for the Class VV license shall be ten dollars.

CHAPTER 107

(Com. Sub. for H. B. 4151—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-c, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the amount and type of insurance coverage for obstetric treatment of medicaid patients; including provisions for primary insurance coverage for specified medical practitioners; excess insurance coverage for specified medical practitioners; and authorizing the board of risk and insurance management, with approval of the insurance commissioner, to promulgate rules and regulations.

Be it enacted by the Legislature of West Virginia:

That section five-c, article twelve, 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 12. STATE INSURANCE.

§29-12-5c. Insurance for damages allegedly resulting from obstetric treatment of medicaid patients.

(a) In accordance with the provisions of this article,
the state board of risk and insurance management shall
provide professional malpractice insurance for all
medical practitioners who provide obstetric treatment to
patients which is reimbursed or reimbursable by state
medicaid funds: Provided, That such medical practi-
tioner has, prior to the alleged negligent act or acts,
become a participant in the primary professional
malpractice insurance program.

Said primary insurance shall cover any claim, 
demand, action, suit or judgment by reason of alleged
negligence in the course of providing such obstetric
treatment which results in injury. Such primary
insurance coverage shall be in an amount to be deter-
mined by the state board of risk and insurance manage-
ment, but in no event less than one million dollars for
each occurrence.

Such primary insurance coverage shall be mandatory
for medical practitioners covered for obstetric treatment
by the board of risk and insurance management. Such
primary coverage shall be optional for any other
medical practitioner who treats medicaid obstetric
patients.

The board of risk and insurance management shall
establish the criteria for the program for the approval
of the insurance commissioner on or before the fifteenth
day of June, one thousand nine hundred ninety.

The insurance coverage specified in this subsection
shall not apply to any hospital which is the site of the
obstetric treatment or to any employee of said hospital,
except that a medical practitioner providing the
obstetric treatment who is also an employee of the
hospital which is the site of the treatment shall be
included in the insurance coverage required by this
section.

(b) In accordance with the provisions of this article,
the state board of risk and insurance management shall
provide optional excess professional malpractice insu-
rane for all medical practitioners who provide obstetric
treatment to patients which is reimbursed or reimbur-
sable by state medicaid funds: Provided, That such
medical practitioner has, prior to the alleged negligent
act or acts, become a participant in the excess insurance
program. Such excess insurance coverage shall, in no
event, exceed three million dollars.

For the purposes of this subsection, excess insurance
shall be defined as coverage over and above any other
primary or collectible malpractice liability coverage. In
no event shall this coverage be primary. Each insured
must carry primary insurance of at least one million
dollars. Such liability excess malpractice coverage shall
be in an amount to be determined by the state board
of risk and insurance management, but in no event less
than one million dollars for each occurrence.

The board of risk and insurance management shall
establish the criteria for an optional program of excess
professional malpractice insurance for the approval of
the insurance commissioner on or before the fifteenth
day of June, one thousand nine hundred ninety.

(c) For the purpose of this section, the definition of
medical practitioner shall be limited to physicians,
obstetric/gynecological nurse practitioners, certified
nurse midwives, nurse anesthetists, and physicians
assistants.

(d) Any premiums assessed and collected under the
provisions of this section, or rules and regulations
promulgated pursuant to the provisions of this section,
shall be placed in a separate insurance pool known as
the obstetrical/gynecological liability pool. Said pool is
to be administered and maintained by the board of risk
and insurance management.

(e) The board of risk and insurance management,
with approval of the insurance commissioner, shall have
the authority to make needful rules and regulations for
the administration of this section, as provided in the
State Administrative Procedures Act in chapter twenty-
nine-a of this code: Provided, That the board of risk and
insurance management, with approval of the insurance
commissioner, shall have the authority to promulgate rules and regulations regarding the discontinuance of the program if participation in the program is insufficient to make said program economically feasible.

CHAPTER 108
(Com. Sub. for H. B. 4493—By Delegates Susman and Ashley, By Request)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections five-b and seventeen, relating to insurance licensing fees and taxation; capital and surplus requirements; and taxation of insurers.

Be it enacted by the Legislature of West Virginia:

That article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections five-b and seventeen, to read as follows:

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-5b. Capital and surplus requirements.
§33-3-17. Minimum tax payable.

§33-3-5b. Capital and surplus requirements.

No insurer shall hereafter be licensed to transact the business of insurance in the state of West Virginia unless it has fully paid in capital stock, if a stock insurer, or surplus, if a mutual insurer, of at least one million dollars. In addition, each such insurer shall have and maintain additional surplus funds of at least one million dollars: Provided, That insurers duly licensed to transact insurance in West Virginia prior to the effective date of this section whose capital and surplus requirements are increased by virtue of this section shall have until the first day of January, one thousand nine hundred ninety-three, to meet such increased requirements.
§33-3-17. Minimum tax payable.

1 The minimum amount of tax payable by any insurer licensed in the state of West Virginia when considering the aggregate payments due from all of the taxes imposed by this article shall be two hundred dollars ($200.00) for any calendar year. This minimum tax shall be payable annually on or before the first day of March and shall be calculated on a form prescribed by the commissioner. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax shall be applicable to the levy, imposition and collection of this minimum tax. All moneys received by the commissioner from this minimum tax shall be paid into the state treasury for the benefit of the state fund.

CHAPTER 109

(Com. Sub. for H. B. 4130—By Mr. Speaker, Mr. Chambers, and Delegate Ashcraft)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twelve of said chapter by adding thereto a new section, designated section two-a, all relating to establishing a continuing education program for agents; suspension for failure to meet requirements; and giving the insurance commissioner certain responsibilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-13. Fees and charges.

1 (a) Except where it is otherwise specially provided,
the commissioner shall demand and receive the following fees from all insurers: For annual fee for each license, two hundred dollars; for receiving and filing annual reports, one hundred dollars; for valuation of policies of life insurers organized under the laws of this state, one and one-half cents for each one thousand dollars of insurance; for valuation of policies of life insurers organized under the laws of any other state licensed to transact insurance in this state the rate for each one thousand dollars of insurance valued as is imposed by the other state upon any similar insurer organized under the laws of this state licensed to transact insurance in the other state; for filing certified copy of articles of incorporation, fifty dollars; for filing copy of its charter, fifty dollars; for filing statements preliminary to admission, one hundred dollars; for filing any additional paper required by law or furnishing copies thereof, one dollar; for every certificate of valuation, copy of report or certificate of condition of company to be filed in any other state, fifteen dollars; for each licensed agent, twenty-five dollars. The commissioner may by regulation set reasonable charges for printed forms for the annual statements required by law. He may sell at cost publications purchased by, or printed on behalf of the commissioner.

(b) Such fees and charges collected by the commissioner under the provisions of this section or elsewhere in this chapter and designated for use by the commissioner for the operation of the department of insurance or for the purposes of this section, shall be paid into a special revenue account, hereby created in the state treasury, to be expended and used by the commissioner, upon his requisition and after appropriation by the Legislature, for the operation of the department of insurance. Notwithstanding any provisions in this code to the contrary, the commissioner may expend, in accordance with the provisions of section two-a, article twelve of this chapter, from the special revenue account established pursuant to this section, amounts necessary to establish and maintain a system of continuing education for agents as provided in section two-a, article twelve of this chapter.
ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2a. Duty to receive continuing education; educational requirements; compliance; penalties.

The purpose of this provision is to provide continuing education under guidelines set up under the insurance commissioner's office effective the first day of July, one thousand nine hundred ninety-two, with the guidelines to be set up under the board of insurance agent education. Nothing in this section shall prohibit an individual from receiving commissions which have been vested and earned while that individual maintained an approved insurance agent's license.

(a) This section applies to persons licensed to engage in the sale of the following types of insurance:

(1) Life insurance, annuity contracts, variable annuity contracts and variable life insurance;

(2) Sickness, accident and health insurance;

(3) All lines of property and casualty insurance; and

(4) All other lines of insurance for which an examination is required for licensing.

(b) This section does not apply to:

(1) Persons holding resident licenses for any kind or kinds of insurance offered in connection with loans or other credit transactions or insurance for which an examination is not required by the commissioner, nor does it apply to any such limited or restricted license as the commissioner may exempt;

(2) Individuals selling credit life or credit accident and health insurance.

(c) (1) The board of insurance agent education as established by section two of this article shall develop a program of continuing insurance education and submit the proposal for the approval of the commissioner on or before the thirty-first day of December of each year. No program shall be approved by the commissioner that includes a requirement that any
agent complete more than thirty hours of continuing insurance education biennially.

(2) The commissioner and the board, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, agents' association, insurance trade association or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this section.

(d) Persons licensed to sell insurance and who are not otherwise exempt shall satisfactorily complete the courses or programs of instruction as the commissioner may prescribe.

(e) Every person, subject to the continuing education requirements shall furnish, at intervals and on forms as may be prescribed by the commissioner, written certification listing the courses, programs or seminars of instruction successfully completed by the person. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs or seminars of instruction.

(f) Any person, failing to meet the requirements mandated in this section, and who has not been granted an extension of time, with respect to such requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance shall, after a hearing thereon, which hearing may be waived by the person, be subjected to suspension of all licenses issued for any kind or kinds of insurance. No further license may be issued to the person for any kind or kinds of insurance until he or she has demonstrated to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(g) Hearings for the violation of any provision of this section, and the administrative procedure prior to, during and following these hearings shall be conducted
in accordance with the provisions of article two of this chapter.

(h) The commissioner is authorized to hire personnel and make reasonable expenditures as deemed necessary for purposes of establishing and maintaining a system of continuing education for insurers.

CHAPTER 110

(Com. Sub. for H. B. 4195—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, seven, eight, ten, fourteen, eighteen, nineteen-a, twenty-one, twenty-nine and thirty-six, article ten, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article ten by adding thereto three new sections, designated sections thirty-seven, thirty-eight and thirty-nine; to amend and reenact section two, article twenty-two; section two, article twenty-three; section four, article twenty-four; section six, article thirty-one; and section three, article thirty-two, all of chapter thirty-three; to further amend said article twenty-four by adding thereto twenty-nine new sections, designated sections fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one and forty-two; to amend article twenty-five of said chapter thirty-three by adding thereto a new section, designated section nineteen; to amend article twenty-five-a of said chapter thirty-three by adding thereto a new section, designated section thirty; and to further amend chapter thirty-three by adding thereto two new articles, designated articles thirty-four and thirty-five, all relating to insurance; rehabilitation and
liquidation; definitions; jurisdiction; venue; appeal of delinquency proceedings; exclusive remedy; commencement of delinquency proceedings; injunction or other orders; grounds for rehabilitation of domestic insurers; grounds for conserving assets of foreign and alien insurer; order of rehabilitation; conduct of delinquency proceedings against domestic or alien insurers; proof of claims; priority of distribution; uniform insurers liquidation act; allowance of certain claims; creating preference among creditors; disbursement of assets; distribution of assets; unclaimed and withheld funds; immunity in receivership proceedings; representation of the special deputy supervisor; farmers' mutual fire insurance companies, applicability of other provisions; fraternal benefit societies, applicability of other provisions; hospital service corporations; medical service corporations; dental service corporations; exemptions; applicability of insurance laws; definitions; jurisdiction; venue and appeal of delinquency proceedings; exclusive remedy; commencement of delinquency proceedings; ex parte orders; injunctions and other orders; grounds for rehabilitation of a corporation; grounds for liquidation; grounds for administrative supervision; order of rehabilitation; order of liquidation; conduct of delinquency proceedings against a corporation; claims of nonresidents against a corporation; proof of claims; priority of certain claims; order of distribution; attachment; garnishment; execution; deposit of moneys collected; exemption of commissioner from fees; borrowing on pledge of assets; date rights fixed on liquidation; voidable transfers; priority of claims for compensation; offsets; allowance of claims; time within which claims to be filed; assessment; creating preference among creditors; disbursement of assets; distribution of assets; unclaimed and withheld funds; immunity in receivership proceedings; health care corporations, administrative supervision; health maintenance organization act, administrative supervision; captive insurance, corporate organization; risk retention act, charter and license requirements for domestic groups; administrative supervision; definitions; applicability; notice to comply with written require-
ments of commissioner; noncompliance; administrative supervision; confidentiality of certain proceedings and records; prohibited acts during period of supervision; administrative election of proceedings; rules; meetings between the commissioner and the special deputy supervisor; special deputy supervisor appointed; expenses; immunity; severability; criminal sanctions for failure to report impairment; definitions; duty to notify; and penalty.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 33. INSURANCE.

Article
10. Rehabilitation and Liquidation.
22. Farmers' Mutual Fire Insurance Companies.
23. Fraternal Benefit Societies.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.


32. Risk Retention Act.

34. Administrative Supervision.


ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-1. Definitions.
§33-10-2. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy.
§33-10-3. Commencement of delinquency proceedings.
§33-10-4. Injunctions or other orders.
§33-10-5. Grounds for rehabilitation of domestic insurers.
§33-10-7. Grounds for conserving assets of foreign insurers.
§33-10-8. Grounds for conserving assets of alien insurers.
§33-10-10. Order of rehabilitation.
§33-10-14. Conduct of delinquency proceedings against domestic or alien insurers.
§33-10-18. Proof of claims.
§33-10-19a. Priority of distribution.
§33-10-29. Allowance of certain claims.
§33-10-36. Creating preference among creditors; disbursement of assets.
§33-10-37. Distribution of assets.
§33-10-38. Unclaimed and withheld funds.
§33-10-39. Immunity in receivership proceedings and representation of the special deputy supervisor.

§33-10-1. Definitions.

For the purpose of this article the following definitions shall apply:

(a) "Impairment" or "insolvency" means when the capital of a stock insurer, or the surplus of a mutual or reciprocal insurer shall not at least equal all liabilities and required reserves together with its total issued and outstanding capital stock if a stock insurer, or the minimum surplus if a mutual or reciprocal insurer, required by this chapter to be maintained for the kind or kinds of insurance it is then licensed to transact.

(b) "Insurer" means any person, firm, corporation, association or aggregation of persons doing an insurance business and which is or has been subject to the insurance supervisory authority of, or to liquidation,
rehabilitation, reorganization or conservation by the commissioner or the equivalent insurance supervisory official of another state.

(c) “Delinquency proceeding” means any proceeding commenced against an insurer pursuant to this article for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

(d) “State” means any state, district or territory of the United States.

(e) “Foreign country” means any other jurisdiction not in any state.

(f) “Domiciliary state” means the state in which an insurer is incorporated or organized, or in the case of an alien insurer as defined in section eight, article one of this chapter, the state in which such insurer, having become authorized to do business in such state, has at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States or its state of entry.

(g) “Ancillary state” means any state other than a domiciliary state.

(h) “Reciprocal state” means any state other than this state in which in substance and effect the provisions of the Uniform Insurers Liquidation Act, as defined in section twenty-one of this article, are in force, including the provisions requiring that the insurance commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer.

(i) “General assets” means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of
all policyholders or all policyholders and creditors in
more than a single state shall be deemed general assets.

(j) "Preferred claim" means any claim with respect to
which the terms of this article accord priority of
payments from the general assets of the insurer.

(k) "Special deposit claim" means any claim secured
by a deposit made pursuant to statute for the security
or benefit of a limited class or classes of persons, but
not including any general assets.

(l) "Secured claim" means any claim secured by
mortgage, trust deed, pledge, deposit as security,
escrow, or otherwise, but not including special deposit
claim or claims against general assets. The term also
includes claims which more than four months prior to
the commencement of delinquency proceedings in the
state of the insurer's domicile have become liens upon
specific assets by reason of judicial process.

(m) "Receiver" means receiver, liquidator, rehabilita-
tor, or conservator as the context may require.

(n) "Guaranty association" means the West Virginia
Insurance Guaranty Association created by article
twenty-six of this chapter, the West Virginia Life and
Health Insurance Guaranty Association Act created by
article twenty-six-a of this chapter, and any other
similar entity now or hereafter created by the Legisla-
ture of this state for the payment of claims of insolvent
insurers.

(o) "Foreign guaranty association" means any similar
entities now in existence in or hereafter created by the
Legislature of any other state.

§33-10-2. Jurisdiction, venue and appeal of delinquency
proceedings; exclusive remedy.

(a) The circuit courts of this state or the judges thereof
in vacation are vested with exclusive original jurisdic-
tion of delinquency proceedings under this article, and
are authorized to make all necessary and proper orders
to carry out the purposes of this article.

(b) The venue of delinquency proceedings against a
domestic insurer shall be in the circuit court of the
(c) With the exception of administrative supervision pursuant to article thirty-four of this chapter, delinquency proceedings pursuant to this article shall constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing or conserving an insurer, and no court shall entertain a petition for the commencement of such proceedings unless the same has been filed in the name of the state on the relation of the insurance commissioner.

(d) An appeal shall lie to the supreme court of appeals from an order granting or refusing rehabilitation, liquidation, or conservation, and from every other order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein.

(e) At any time after an order is made under section ten or eleven of this article, the commissioner may remove the principal office of the insurer proceeded against to Kanawha County. In the event of such removal, the court wherein the proceeding was originally commenced shall, upon the application of the commissioner, direct its clerk to transmit all the pleadings, motions and other papers filed therein with such clerk to the clerk of the circuit court of Kanawha County. The proceeding shall thereafter be subject to the jurisdiction of the Kanawha County circuit court and conducted in the same manner as though it had been commenced in the Kanawha County circuit court.

§33-10-3. Commencement of delinquency proceedings.

(a) The commissioner may file in the appropriate circuit court of this state, as provided in section two of this article, a petition alleging, with respect to a domestic insurer:

(1) That there exists any grounds that would justify
a court order for a delinquency proceeding against an insurer under this act;

(2) That the interests of policyholders, creditors or the public will be endangered by delay; and

(3) The contents of an order deemed necessary by the commissioner.

(b) Upon a filing under subsection (a), the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business; and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner.

(c) The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a delinquency proceeding under this article after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this article shall ipso facto vacate the seizure order.

(d) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(e) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of such order for a hearing and review of the order. The court shall hold such hearing and review not more than fifteen days after the request. Subject to the
approval of the court, a hearing under this subsection
may be held privately in chambers if the insurer
proceeded against so requests.

(f) If, at any time after the issuance of such an order,
it appears to the court that any person whose interest
is or will be substantially affected by the order did not
appear at the hearing and has not been served, the court
may order that notice be given. An order that notice be
given shall not stay the effect of any order previously
issued by the court.

§33-10-4. Injunctions or other orders.

(a) Upon application by the commissioner for an order
under this article:

(1) The court may without notice issue an injunction
restraining the insurer, its officers, directors, stock-
holders, members, subscribers, agents and all other
persons from the transaction of its business or the waste
or disposition of its property until the further order of
the court.

(2) The court may at any time during a proceeding
under this article issue such other injunctions or orders
as may be deemed necessary to prevent interference
with the commissioner or the proceeding, or waste of the
assets of the insurer, or the commencement or prosecu-
tion of any actions, or the obtaining of preferences,
judgments, attachments or other liens, or the making of
any levy against the insurer or against its assets or any
part thereof.

(3) The court may order any managing general agent
or attorney in fact to release to the commissioner any
books, records, accounts, documents or other writings
relating to the business of such person: Provided, That
any of the same or the property of such an agent or
attorney shall be returned when no longer necessary to
the commissioner or at any time the court after notice
and hearing shall so direct.

(b) Any person having possession of and refusing to
deliver any of the books, records, or assets of an insurer
against whom a seizure order has been issued by the
commissioner, shall be guilty of a misdemeanor and
punishable by fine not exceeding one thousand dollars
or imprisoned not more than one year, or both such fine
and imprisonment.

(c) Whenever the commissioner makes any seizure as
provided in section three, it shall be the duty of the
sheriff of any county of this state, and of the police
department of any municipality therein, to furnish the
commissioner, upon demand, with such deputies,
patrolmen or officers as may be necessary to assist the
commissioner in making and enforcing any such seizure.

(d) Notwithstanding any other provision of law, no
bond shall be required of the commissioner as a
prerequisite for the issuance of any injunction or
restraining order pursuant to this section.

§33-10-5. Grounds for rehabilitation of domestic insurers.

The commissioner may apply to the court for an order
appointing him as receiver of and directing him to
rehabilitate a domestic insurer or the United States
branch of an alien insurer having trusteeed assets in this
state, upon one or more of the following grounds. That
the insurer:

(a) Is impaired or insolvent.

(b) Has refused to submit to reasonable examination
by the commissioner, its property, books, records,
accounts or affairs or those of any subsidiary or related
company within the control of the insurer, or those of
any person having executive authority in the insurer as
far as they pertain to the insurer.

(c) Has failed to comply with an order of the commis-
sioner to make good an impairment of capital or surplus
or both.

(d) Has transferred or attempted to transfer substan-
tially its entire property or business, or has entered into
any transaction the effect of which is to merge substan-
tially its entire property or business in that of any other
insurer or other legal entity without having first
obtained the written approval of the commissioner.
(e) Has willfully violated its charter, articles of incorporation, its bylaws, any law of this state or any valid order of the commissioner.

(f) Has an officer, director, or manager who has refused to be examined under oath concerning its affairs, for which purpose the commissioner is hereby authorized to conduct and to enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States, in which any such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

(g) Has been the subject of an application for the appointment of a receiver, trustee, custodian, or sequestrator of the insurer or its property otherwise than pursuant to the provisions of this chapter, but only if such appointment has been made or is imminent and its effect is or would be to oust the courts of this state of jurisdiction hereunder.

(h) Has consented to such an order through a majority of its directors, stockholders, members or subscribers.

(i) Has failed to pay a final judgment rendered against it in this state upon any insurance contract issued or assumed by it, within thirty days after the judgment became final or within thirty days after the time for taking an appeal has expired or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

§33-10-7. Grounds for conserving assets of foreign insurers.

The commissioner may apply to the court for an order appointing him as receiver or ancillary receiver, and directing him to conserve the assets within this state, of a foreign insurer upon any of the following grounds:

(a) Upon any of the grounds specified in sections five or six of this article, or

(b) Upon the ground that its property has been
§33-10-8. Grounds for conserving assets of alien insurers.

The commissioner may apply to the court for an order appointing him as receiver or ancillary receiver, and directing him to conserve the assets within this state, of any alien insurer upon any of the following grounds:

(a) Upon any of the grounds specified in sections five or six of this article,

(b) Upon the ground that the insurer has failed to comply, within the time designated by the commissioner, with an order made by him to make good an impairment of its trusteed funds, or

(c) Upon the ground that the property of the insurer has been sequestrated in a country other than the United States.

§33-10-10. Order of rehabilitation.

(a) An order to rehabilitate a domestic insurer or the United States branch of an alien insurer having trusteed assets in this state shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(b) If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he may apply to the court for an order of liquidation.

(c) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply to the court for an order terminating the rehabilitation proceedings and permitting the insurer to resume possession of its property and the conduct of its business, but no such order shall be granted except when, after a full hearing, the court has determined that the purposes of the proceeding have been fully accomplished.
§33-10-14. Conduct of delinquency proceedings against domestic or alien insurers.

1 (a) Whenever under this article a receiver is to be appointed in delinquency proceedings for a domestic or alien insurer, the court shall appoint the insurance commissioner as such receiver. The court shall order the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

8 (b) As domiciliary receiver, the commissioner shall be vested by operation of law with the title to all the property, contracts, and rights of action and all of the books and records of the insurer, wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer or to liquidate the United States branch of an alien insurer domiciled in this state and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are herein prescribed for ancillary receivers appointed in this state as to assets located in this state.

22 (c) The recording of a certified copy of the order directing possession to be taken in the office of the clerk of the county commission of the county where the proceedings are pending and in the office of the clerk of the county commission of any county wherein the insurer has property or other assets, recorded in the same manner as deeds to real property are recorded, shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly recorded or filed.

32 (d) The commissioner as domiciliary receiver shall be responsible for the proper administration of all assets coming into his possession or control. The court may at any time require a bond from him or his deputies if deemed desirable for the protection of such assets. The cost of such shall be paid out of the assets of the insurer as a cost of administration.
(e) Upon taking possession of the assets of an insurer, the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by this article for the purpose of rehabilitating, liquidating, or conserving the affairs or assets of the insurer.

(f) In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners of insurance to act for him and may employ such counsel, clerks, and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. In the event the property of such person does not contain cash or liquid assets sufficient to defray the cost of the service required to be performed under the terms of this article, the commissioner may pay the cost of such services out of the commissioner's "Operating-Additional Fees" account. Any amount so paid shall be deemed expenses of administration and shall be repaid to said fund out of the first available moneys in the estate. Within the limits of duties imposed upon them, special deputies shall possess all the powers given to and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings.

§33-10-18. Proof of claims.

(a) All claims against an insurer against which delinquency proceedings have begun shall set forth in reasonable detail the amount of the claim, or the basis upon which such amount can be ascertained, the facts upon which the claim is based, and the priorities asserted, if any. All such claims shall be verified by the affidavit of the claimant, or someone authorized to act on his behalf and having knowledge of the facts, and shall be supported by such documents as may be material thereto.
(b) All claims filed in this state shall be filed with the receiver, whether domiciliary or ancillary, in this state, on or before the last date for filing as specified in this article.

(c) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file his objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

(d) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or his attorney and to any other persons directly affected, not less than ten nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his recommendation. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

(e) At the hearing, all persons interested shall be entitled to appear and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

§33-10-19a. Priority of distribution.

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate
funds retained for such payment before the members of
the next class receive any payment. No subclasses shall
be established within any class. No claim by a share-
holder, policyholder or other creditor shall be permitted
to circumvent the priority classes through the use of
equitable remedies. The order of distribution shall be:

(a) Class I. The costs and expenses of administration,
including, but not limited to, the following:

(1) The actual and necessary costs of preserving or
recovering the assets of the insurer;

(2) Compensation for all services rendered in the
liquidation;

(3) Any necessary filing fees;

(4) The fees and mileage payable to witnesses;

(5) Reasonable attorney's fees; and

(6) All expenses incurred by the department of
insurance arising out of the enforcement of chapter
thirty-three and its regulations.

(b) Class II. Debts due to employees for compensation
under the provisions of section twenty-seven of this
article.

(c) Class III. All claims for refund of unearned
premiums under nonassessable policies and all claims of
policyholders including such claims of the federal or any
state or local government for losses incurred and third
party claims of an insolvent insurer and all reasonable
claims of the West Virginia insurance guaranty associ-
ations and associations or entities performing a similar
function in other states.

(d) Class IV. Claims of general creditors including
claims of ceding and assuming companies in their
capacity as such.

(e) Class V. Claims of the federal or any state or local
government. Claims, including those of any governmen-
tal body for a penalty or forfeiture, shall be allowed in
this class only to the extent of the pecuniary loss
sustained from the act, transaction or proceeding out of
which the penalty or forfeiture arose, with reasonable
and actual costs occasioned thereby. The remainder of
such claims shall be postponed to the class of claims
under subdivision (h) of this section.

(f) Class VI. Claims filed late or any other claims other
than claims under subdivisions (g) and (h) of this section.

(g) Class VII. Surplus or contribution notes, or similar
obligations and premium refunds on assessable policies.
Payments to members of domestic mutual insurance
companies shall be limited in accordance with law.

(h) Class VIII. The claims of shareholders or other
owners.


(a) Paragraphs (b) to (m), inclusive, of section one of
this article, together with sections four, and fourteen to
twenty, inclusive, of this article constitute and may be
referred to as the Uniform Insurers Liquidation Act.

(b) The Uniform Insurers Liquidation Act shall be so
interpreted and construed as to effectuate its general
purpose to make uniform the law of those states that
enact it. To the extent that its provisions when appli-
cable conflict with other provisions of this article the
provisions of such act shall control.

§33-10-29. Allowance of certain claims.

(a) No contingent claim shall share in a distribution
of the assets of an insurer which has been adjudicated
to be insolvent by an order made pursuant to this article,
except that such claim shall be considered, if properly
presented, and may be allowed to share where:

(1) It does not prejudice the orderly administration of
the liquidation, or

(2) There is a surplus and the liquidation is thereafter
conducted upon the basis that such insurer is solvent.

(b) Where an insurer has been so adjudicated to be
insolvent any person who has a cause of action against
an insured of such insurer under a liability insurance
policy issued by such insurer shall have the right to file
a claim in the liquidation proceeding, regardless of the fact that such claim may be contingent, and such claim may be allowed:

(1) If it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured, and

(2) If such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claim against such insurer arising out of his cause of action other than those already presented can be made, and

(3) If the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation.

(c) No judgment against such an insured taken after the date of entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the entry of the liquidation order shall be considered as conclusive evidence in the liquidation proceedings, either of the liability of such insured to such person upon such cause of action or of the amount of damages to which such person is therein entitled.

A claim by a third party founded upon an insurance policy may be allowed without requiring such claim to be reduced to judgment, provided it can be reasonably inferred from the proof presented that the claimant would be able to obtain a judgment upon his cause of action against the insured and that such judgment would represent a liability of the insurer in liquidation under the policy of insurance upon which such claim is founded.

(d) No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order
of liquidation or such other date set by the court for determining rights and liabilities as provided in section twenty-five of this article unless the claimant shall surrender his security to the commissioner, in which event the claim shall be allowed in the full amount for which it is valued.

(e) Whenever a creditor, whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name, and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution, however, until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such other person. The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association.

(f) Unless such claim is filed in the manner and within the time provided in section eighteen, it shall not be entitled to filing or allowance, and no action may be maintained thereon. In the liquidation, pursuant to the provisions of this article, of any domestic insurer which has issued policies insuring the lives of persons, the commissioner shall, within thirty days after the last day set for the filing of claims, make a list of the persons who have not filed proofs of claim with him and to whom, according to the books of said insurer, there are amounts owing under such policies, and he shall set opposite the name of each such person the amount so owing to such person. Each person whose name shall appear upon said list shall be deemed to have duly filed, prior to the last day set for the filing of claims, a claim for the amount set opposite his name on said list.

(g) Claims founded upon unliquidated or undeter-
mined demands must be filed within the time limit provided in this article for the filing of claims, but claims founded upon such demands shall not share in any distribution to creditors of a person proceeded against under section nineteen-a, until such claims have been definitely determined, proved and allowed. Thereafter, such claims shall share ratably with other claims of the same class in all subsequent distributions.

An unliquidated or undetermined claim or demand within the meaning of this article shall be deemed to be any such claim or demand upon which a right of action has accrued at the date of the order of liquidation and upon which the liability has not been determined or the amount thereof liquidated.

(h) The commissioner may require, as a condition of payment of the final liquidation dividend to a lender, or his assignee, who has filed a claim for an unearned premium as an assignee of the insured for valuable consideration:

That such assignee of the insured shall assign to the liquidator all his right, title, and interest in any unsatisfied debt of the insured to such assignee, pertaining to policies of the insolvent insurer, remaining unpaid after crediting the final liquidation dividend, if the amount of such unsatisfied debt is less than one hundred dollars and one cent.

That all of the documents giving rise to such debt be delivered to him or her.

(i) The commissioner may determine whether or not it will be feasible to attempt to collect any such assigned debt. If he determines not to pursue collection of any such debt, he shall file a declaration to that effect with the liquidation court and be relieved of any further responsibility in respect to such debt.

(j) As used in this section, "insured" means a natural person who purchased insurance from the insolvent insurer for personal, family, or household purposes.

§33-10-36. Creating preference among creditors; disbursement of assets.

(a) Within one hundred twenty days of a final
determination of insolvency of an insurance company by
the circuit court, the commissioner shall make applica-
tion to the court for approval of a proposal to disburse
assets out of such company's marshaled assets, from
time to time as such assets become available, to the West
Virginia insurance guaranty association and any similar
organization performing a similar function in another
state. The West Virginia insurance guaranty association
and any entity or person performing a similar function
in other states shall hereinafter be referred to collec-
tively as the associations. If the commissioner deter-
mines that there are insufficient assets to disburse, the
application required by this section shall be satisfied by
a filing by the commissioner stating the reasons for this
determination.

(b) Such proposal shall at least include provisions for:

(1) Reserving amounts for the payment of expenses of
administration and of claims falling within the priori-
ties established in the Uniform Insurers Liquidation Act
but only with respect to such priorities higher than that
of the associations;

(2) Disbursement of the assets marshaled to date and
subsequent disbursement of assets as they become
available;

(3) Equitable allocation of disbursements to each of
the associations entitled thereto;

(4) The securing by the commissioner from each of the
associations entitled to disbursements pursuant to this
section of an agreement to return to the commissioner
such assets, together with income earned on assets
previously disbursed, as may be required to pay claims
of secured creditors and claims falling within the
priorities established in section twenty-seven of this
article. No bond shall be required of any such associ-
ation; and

(5) A full report to be made by the association to the
commissioner accounting for all assets so disbursed to
the association, all disbursements made therefrom, any
interest earned by the association on such assets and any
other matter as the court may direct.

(c) The commissioner's proposal shall provide for
disbursements to the associations in amounts estimated
at least equal to the claim payments made or to be made
thereby for which such associations could assert a claim
against the commissioner, and shall further provide that
if the assets available for disbursement from time to
time do not equal or exceed the amount of such claim
payments made or to be made by the association, then
disbursements shall be in the amount of available assets.

(d) Notice of such application shall be given to the
associations in and to the commissioners of insurance of
each of the states. Any such notice shall be deemed to
have been given when deposited in the United States
mail, first class postage prepaid, at least thirty days
prior to submission of such application to the court.
Action on the application may be taken by the court
provided the above required notice has been given and
provided that the commissioner's proposal complies with
subdivisions (1) and (2), subsection (b) hereof.

§33-10-37. Distribution of assets.

Under the direction of court, the liquidator shall pay
distributions in a manner that will assure the proper
recognition of priorities and a reasonable balance
between the expeditious completion of the liquidation
and the protection of unliquidated and undetermined
claims, including third party claims. Distribution of
assets in kind may be made at valuations set by
agreement between the liquidator and the creditor and
approved by the court.

§33-10-38. Unclaimed and withheld funds.

All unclaimed funds subject to distribution remaining
in the liquidator's hands when he is ready to apply to
the court for discharge, including the amount distrib-
utable to any creditor, shareholder, member or other
person who is unknown or cannot be found, shall be
deposited with the state treasurer, and shall be paid
without interest to the person entitled thereto or his
legal representative upon proof satisfactory to the state treasurer of his right thereto. Any amount on deposit not claimed within six years from the discharge of the liquidator shall be deemed to have been abandoned and shall be escheated to the state of West Virginia without formal escheat proceedings and be deposited with the general fund.

§33-10-39. Immunity in receivership proceedings and representation of the special deputy supervisor.

(a) No claim of any nature whatsoever that is directly related to the receivership of an insurer shall arise against, and no liability shall be imposed upon, the insurance commissioner, deputy commissioner, special deputy supervisor, or any person or entity acting as a receiver of an insurer, including surety, in rehabilitation, liquidation, or conservation as a result of a court order issued on or after the effective date of this article for any statement made or actions taken or not taken in the good faith exercise of their powers under law. However, this immunity shall not extend to acts or omissions which are malicious or grossly negligent. This qualified immunity extends to agents and employees of the receiver.

(b) In any civil proceeding filed against a special deputy supervisor appointed pursuant to this article, the special deputy supervisor shall be entitled to be represented by the attorney general.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.


Each company to the same extent such provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article ten (rehabilitation and liquidation) except that under the provisions of section thirty-two of said article ten no assessment shall be levied against any
former member of a farmers' mutual fire insurance company who is no longer a member of the company at the time the order to show cause was issued, article eleven (unfair practices and frauds), article twelve (agents, brokers and solicitors) except that the agents' license fee shall be five dollars, article twenty-six (West Virginia Insurance Guaranty Association Act), article thirty (mine subsidence insurance) except that under the provisions of section six, article thirty, a farmers' mutual insurance company shall have the option of offering mine subsidence coverage to all of its policyholders but shall not be required to do so, article thirty-three (annual audited financial report), and article thirty-four (administrative supervision), but only to the extent these provisions are not inconsistent with the provisions of this article.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.


Every fraternal benefit society shall be governed and be subject, to the same extent as other insurers transacting like kinds of insurance, to the following articles of this chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions), article six, section thirty (fee for form and rate filing), article ten (rehabilitation and liquidation), article eleven (unfair trade practices), article twelve (agents, brokers, solicitors and excess lines), article thirteen (life insurance), article fifteen-a (long-term care insurance), article thirty-three (annual audited financial report) and article thirty-four (administrative supervision).

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-4. Exemptions; applicability of insurance laws.
§33-24-15. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy.
§33-24-17. Ex parte orders, injunctions and other orders.
§33-24-20. Grounds for administrative supervision.
§33-24-23. Conduct of delinquency proceedings against a corporation.
§33-24-25. Proof of claims.
§33-24-27. Order of distribution.
§33-24-28. Attachment, garnishment or execution.
§33-24-29. Deposit of moneys collected.
§33-24-30. Exemption of commissioner from fees.
§33-24-31. Borrowing on pledge of assets.
§33-24-32. Date rights fixed on liquidation.
§33-24-33. Voidable transfers.
§33-24-34. Priority of claims for compensation.
§33-24-35. Offsets.
§33-24-36. Allowance of claims.
§33-24-37. Time within which claims to be filed.
§33-24-38. Assessment.
§33-24-40. Distribution of assets.
§33-24-41. Unclaimed and withheld funds.
§33-24-42. Immunity in receivership proceedings.

*§33-24-4. Exemptions; applicability of insurance laws.

1 Every such corporation is hereby declared to be a scientific, nonprofit institution and as such exempt from the payment of all property and other taxes. Every such corporation, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner) except that under section nine of article two examinations shall be conducted at least once every four years, article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article six, section thirty-four (fee for form and rate filing), article ten (rehabilitation and liquidation), article eleven (unfair practices and frauds), article

*Clerk's Note: §33-24-4 was also amended by S. B. 481 (Chapter 117), which passed prior to this act.
twelve (agents, brokers and solicitors) except that the agent’s license fee shall be five dollars, article fifteen-a (long-term care insurance), section three-a, article sixteen (mental illness), section three-c, article sixteen (group accident and sickness insurance), section three-d, article sixteen (medicare supplement), section three-f, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder), article twenty-eight (individual accident and sickness insurance minimum standards), article thirty-three (annual audited financial report) and article thirty-four (administrative supervision); and no other provision of this chapter shall apply to such corporations unless specifically made applicable by the provisions of this article.

If, however, any such corporation shall be converted into a corporation organized for a pecuniary profit, or if it shall transact business without having obtained a license as required by section five of this article, it shall thereupon forfeit its right to these exemptions.


For the purpose of sections fourteen through forty-six of this article:

(a) “Impairment” or “insolvency”. A corporation shall be deemed to be impaired and the corporation shall be deemed to be insolvent, when such corporation shall not be possessed of assets at least equal to all liabilities and required reserves.

(b) “Corporation” shall be defined in section two of this article.

(c) “Delinquency proceeding” means any proceeding commenced against a corporation pursuant to this article for the purpose of liquidating, rehabilitating, supervising, reorganizing or conserving such corporation.

(d) “State” means any state, district or territory of the United States.

(e) “Foreign country” means any other jurisdiction not in any state.
(f) "Domiciliary state" means the state of West Virginia for any corporation.

(g) "Ancillary state" means any state other than West Virginia.

(h) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of the Uniform Insurers Liquidation Act, as defined in section twenty-one of article ten of chapter thirty-three, are in force, including the provisions requiring that the insurance commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer.

(i) "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in more than a single state shall be deemed general assets.

(j) "Preferred claim" means any claim with respect to which the terms of this article accord priority of payments from the general assets of the insurer.

(k) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(l) "Secured claim" means any claim secured by mortgage, trust, deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claim or claims against general assets. The term also includes claims which more than four months prior to the commencement of delinquency proceedings have become liens upon specific assets by reason of judicial process.

(m) "Receiver" means receiver, liquidator, rehabilitator, supervisor or conservator as the context may require.
§33-24-15. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy.

(a) The circuit courts of this state or the judges thereof in vacation are vested with exclusive original jurisdiction of delinquency proceedings under this article, and are authorized to make all necessary and proper orders to carry out the purposes of this article.

(b) The venue of delinquency proceedings against a corporation shall be in the circuit court of the county of the corporation's principal place of business.

(c) Delinquency proceedings pursuant to this article shall constitute the sole and exclusive method of liquidating, rehabilitating, supervising, reorganizing or conserving a corporation, and no court shall entertain a petition for the commencement of such proceedings unless the same has been filed in the name of the state on the relation of the insurance commissioner.

(d) An appeal shall lie to the supreme court of appeals from an order granting or refusing rehabilitation, liquidation, supervision or conservation, and from every other order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein.

(e) At any time after an order is made under section sixteen or seventeen of this article the commissioner may remove the principal office of the corporation proceeded against to Kanawha County. In the event of such removal, the court wherein the proceeding was originally commenced shall, upon the application of the commissioner, direct its clerk to transmit all the pleadings, motions and other papers filed therein with such clerk to the clerk of the circuit court of Kanawha County. The proceeding shall thereafter be subject to the jurisdiction of the Kanawha County circuit court and conducted in the same manner as though it had been commenced in the Kanawha County circuit court.


The insurance commissioner shall commence any such
proceeding by an application to the court for an order
directing the corporation to show cause why the
commissioner should not have the relief prayed for. On
the return of such order to show cause, and after a full
hearing, the court, after consideration of the best
interest of the insurer, policyholders, members, sub-
scribers, creditors and the public, shall either deny the
application or, upon a finding that there exists any
ground set forth in this article for a delinquency
proceeding and a finding that the relief prayed for by
the commissioner is necessary, grant the application,
together with such other relief as the nature of the case
and the interest of policyholders, creditors, stockholders,
members, subscribers, or the public require.

§33-24-17. Ex parte orders, injunctions and other orders.

(a) The commissioner may file in the appropriate
circuit court of this state a petition for an ex parte order
alleging, with respect to a corporation:

(1) That there exists any ground that would justify an
application for a court order for a delinquency proceed-
ing against a corporation under this article;

(2) That there exist sufficient exigent circumstances
for an order to be issued without prior notice to the
corporation and that the interests of policyholders,
creditors or the public will be significantly endangered
by delay or prior notice to the corporation; and

(3) The contents of a proposed order deemed necessary
by the commissioner.

(b) Upon a filing under subsection (a), the court may
issue forthwith, ex parte and without a hearing, the
requested order, with such modifications as the court
may deem necessary and appropriate, which shall direct
the commissioner to take possession and control of all
or a part of the property, books, accounts, documents,
and other records of a corporation, and of the premises
occupied by it for transaction of its business, and until
further order of the court enjoin the corporation and its
officers, managers, agents and employees from disposi-
tion of its property and from the transaction of its
business except with the written consent of the
commissioner.

(c) The court shall specify in the order what its
duration shall be, which shall be such time as the court
deems necessary for the commissioner to ascertain the
condition of the corporation. On motion of either party
or on its own motion, the court may from time to time
hold such hearings as it deems desirable after such
notice as it deems appropriate, and may extend, shorten,
or modify the terms of the order. The court shall vacate
the seizure order if the commissioner fails to commence
a delinquency proceeding under this article within a
reasonable time after entry of the ex parte order or the
conclusion of any hearing held pursuant to subsection (e)
whichever is later. An order of the court pursuant to a
formal proceeding under this article shall ipso facto
vacate the order.

(d) Entry of an order under this section shall not
consider an anticipatory breach of any contract of the
corporation.

(e) A corporation subject to an ex parte order under
this section may petition the court at any time after the
issuance of such order for a hearing and review of the
order. The court shall hold such hearing and review not
more than fifteen days after the request. Subject to the
approval of the court, a hearing under this subsection
may be held privately in chambers if the corporation
proceeded against so requests.

(f) If, at any time after the issuance of such an order,
it appears to the court that any person whose interest
is or will be substantially affected by the order did not
appear at the hearing and has not been served, the court
may order that notice be given. An order that notice be
given shall not stay the effect of any order previously
issued by the court.

(g) Upon application by the commissioner for an order
under this article, or at any time thereafter:

(1) The court may without notice issue an injunction
restraining the corporation, its officers, directors, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(2) The court may at any time during a proceeding under this article issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the corporation, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(3) The court may order any managing general agent or attorney in fact to release to the commissioner any books, records, accounts, documents or other writing relating to the business of such person: Provided, That any of the same or the property of such an agent or attorney shall be returned when no longer necessary to the commissioner or at any time the court after notice and hearing shall so direct.

(h) Any person having possession of and refusing to deliver any of the books, records, or assets of a corporation against whom a seizure order has been issued by the commissioner shall be guilty of a misdemeanor and punishable by fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both such fine and imprisonment.

(i) Whenever the commissioner makes any seizures as provided in this article, it shall, on the demand of the commissioner, be the duty of the sheriff of any county of this state, and of the police department of any municipality therein, to furnish him with such deputies, patrolmen or officers as may be necessary to assist the commissioner in making and enforcing any such seizure.

(j) Notwithstanding any other provision of law, no bond shall be required of the commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

The commissioner may apply to the court for an order appointing him as receiver of and directing him to rehabilitate a corporation upon one or more of the following grounds. That the corporation:

(a) Is impaired or insolvent.

(b) Has refused to submit to reasonable examination by the commissioner its property, books, records, accounts or affairs or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the corporation as far as they pertain to the corporation.

(c) Has failed to comply with an order of the commissioner to make good an impairment of surplus.

(d) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other corporation or other legal entity without having first obtained the written approval of the commissioner.

(e) Has willfully violated its charter, articles of incorporation, its bylaws, or any law of this state or any valid order of the commissioner.

(f) Has an officer, director, or manager who has refused to be examined under oath concerning its affairs, for which purpose the commissioner is hereby authorized to conduct and to enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States, in which any such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

(g) Has been the subject of an application for the appointment of a receiver, trustee, custodian, or sequestrator of the corporation or its property otherwise than pursuant to the provisions of this chapter, but only if such appointment has been made or is imminent and
its effect is or would be to oust the courts of this state
of jurisdiction hereunder.

(h) Has consented to such an order through a majority
of its directors, stockholders, members or subscribers.

(i) Has failed to pay a final judgment rendered against
it in this state upon any insurance contract issued or
assumed by it, within thirty days after the judgment
became final or within thirty days after the time for
taking an appeal has expired or within thirty days after
dismissal of an appeal before final determination,
whichever date is the later.


The commissioner may apply to the court for an order
appointing him as a receiver (if his appointment as
receiver shall not be then in effect) and directing him
to liquidate the business of such corporation regardless
of whether or not there has been a prior order directing
him to rehabilitate such corporation, upon any of the
grounds specified in this article, or if such corporation:

(a) Has ceased transacting business for a period of one
year, or

(b) Is an insolvent corporation and has commenced
voluntary liquidation or dissolution, or attempts to
commence or prosecute any action or proceeding to
liquidate its business or affairs, or to dissolve its
corporate charter, or to procure the appointment of a
receiver, trustee, custodian, or sequestrator under any
law except this chapter.

§33-24-20. Grounds for administrative supervision.

(a) Whenever the commissioner has reasonable cause
to believe, and determines after a hearing held under
subsection (e) of this section, that any such corporation
has committed or engaged in, or is about to commit or
engage in, any act, practice, or transaction that would
subject it to delinquency proceedings under this article,
he may make and serve upon such corporation and any
other persons involved, such orders as are reasonably
necessary to correct, eliminate or remedy such conduct,
condition or ground.
(b) If upon examination or at any other time the commissioner has reasonable cause to believe that such corporation is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if such corporation gives its consent, then the commissioner shall upon his determination:

(1) Notify such corporation of his determination; and

(2) Furnish to the insurer a written list of the commissioner's requirements to abate his determination; or

(3) File an application with the court for an order of administrative supervision pursuant to sections sixteen and seventeen of this article.

(c) Upon the issuance of a court order of administrative supervision to the commissioner, the commissioner may appoint a supervisor to supervise such corporation. The order appointing a supervisor shall direct the supervisor to enforce orders issued by the court including orders requiring that such corporation may not do any of the following things during the period of supervision, without the prior approval of the commissioner or his supervisor:

(1) Dispose of, convey or encumber any of its assets or its business in force;

(2) Withdraw from any of its bank accounts;

(3) Lend any of its funds;

(4) Invest any of its funds;

(5) Transfer any of its property;

(6) Incur any debt, obligation or liability;

(7) Merge or consolidate with any company;

(8) Enter into any new reinsurance contract or treaty;

(9) Approve new premiums or renew any policies;

(10) Terminate, surrender, forfeit, convert or lapse
any insurance policy, certificate or contract, except for nonpayment of premiums due;

(11) Release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate or contract;

(12) Make any material change in management; or

(13) Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends, or other payments deemed preferential.

(d) Any such corporation subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, shall have sixty days from the date the supervision order is served within which to comply with the requirements of the commissioner. In the event of such corporation's failure to comply within such times, the commissioner may institute proceedings under section sixteen of this article to have a rehabilitator or liquidator appointed, or extend the period of supervision.

(e) The notice of hearing under subsection (a) and any order issued pursuant to such subsection shall be served upon the insurer pursuant to the applicable rules of civil or administrative procedure. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the commissioner would base his order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten days nor more than thirty days after the notice is served and shall be either in Kanawha County or in some other place convenient to the parties to be designated by the commissioner. The commissioner shall hold all hearings under subsection (a) privately unless the insurer requests a public hearing, in which case the hearing shall be public. Any order issued by the commissioner under subsection (a) shall be subject to immediate review by the appropriate circuit court upon application by the corporation or any party whose interests are substantially affected thereby.

(f) If any person has violated any supervision order
issued under this section which as to him was then still in effect, he shall be liable to pay a civil penalty imposed by the circuit court not to exceed ten thousand dollars:

Provided, That the provisions of this subsection shall not apply to the commissioner, his employees or the supervisor.

(g) The commissioner may, at any time, pursuant to section sixteen or seventeen of this article, apply to the court which issued the order of administrative supervision for such orders as may reasonably be necessary and proper to enforce its orders of supervision, including, but not limited to, restraining orders, preliminary injunctions and permanent injunctions.

(h) In the event that any person, subject to the provisions of this article, including officers, managers, directors, trustees, owners, employees or agents or any person with authority over or in charge of the corporation's affairs, shall knowingly violate any valid order of the commissioner issued under the provisions of this section and, as a result of such violation, the net worth of the corporation shall be reduced or the corporation shall suffer loss it would not otherwise have suffered, said person shall become personally liable to the corporation for the amount of any such reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the corporation in the circuit court to recover the amount of the reduction or loss together with any costs.


(a) An order to rehabilitate a corporation shall direct the commissioner forthwith to take possession of the property of the corporation and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(b) If at any time the commissioner deems that further efforts to rehabilitate the corporation would be useless, he may apply to the court for an order of liquidation.

(c) The commissioner, or any interested person upon
due notice to the commissioner, at any time may apply
to the court for an order terminating the rehabilitation
proceedings and permitting the corporation to resume
possession of its property and the conduct of its business,
but no such order shall be granted except when, after
a full hearing, the court has determined that the
purposes of the proceedings have been fully accom-
plished.


(a) An order to liquidate the business of a corporation
shall direct the commissioner forthwith to take posses-
sion of the property of the corporation, to liquidate its
business, to deal with the corporation's property and
business in his own name as insurance commissioner or
in the name of the corporation, as the court may direct,
and to give notice to all creditors who may have claims
against the corporation to present such claims.

(b) The commissioner may apply for and secure an
order dissolving the corporate existence of a corporation
upon his application for an order of liquidation of such
corporation or at any time after such order has been
granted.

§33-24-23. Conduct of delinquency proceedings against a
corporation.

(a) Whenever under this article a receiver is to be
appointed in delinquency proceedings for a corporation,
the court shall appoint the insurance commissioner as
such receiver. The court shall order the commissioner
forthwith to take possession of the assets of the corpo-
ration and to administer the same under the orders of
the court.

(b) As domiciliary receiver, the commissioner shall be
vested by operation of law with the title to all the
property, contracts, and rights of action and all of the
books and records of the corporation, wherever located,
as of the date of entry of the order directing him to
rehabilitate or liquidate a corporation and he shall have
the right to recover the same and reduce the same to
possession; except ancillary receivers in reciprocal states
shall have, as to assets located in their respective states, the rights and powers which are herein prescribed for ancillary receivers appointed in this state as to assets located in this state.

(c) The recording of a certified copy of the order directing possession to be taken in the office of the clerk of the county commission of the county where the proceedings are pending and in the office of the clerk of the county commission of any county wherein the corporation has property or other assets, recorded in the same manner as deeds to real property are recorded, shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly recorded or filed.

(d) The commissioner as domiciliary receiver shall be responsible for the proper administration of all assets coming into his possession or control. The court may at any time require a bond from him or his deputies if deemed desirable for the protection of such assets. The cost of such shall be paid out of the assets of the corporation as a cost of administration.

(e) Upon taking possession of the assets of an insurer, the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the corporation or to take such steps as are authorized by this article for the purpose of rehabilitating, liquidating, supervising or conserving the affairs or assets of the corporation.

(f) In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners of insurance to act for him and may employ such counsel, clerks, and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the corporation and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the corporation. In the event the property of such person does not contain cash or liquid assets sufficient to defray the cost of the service required to
be performed under the terms of this article, the commissioner may pay the cost of such services out of the commissioner's "Operating-Additional Fees" account. Any amount so paid shall be deemed expenses of administration and shall be repaid to said fund out of the first available moneys in the estate. Within the limits of duties imposed upon them, special deputies shall possess all the powers given to and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings.


(a) In a delinquency proceeding begun in this state against a corporation, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(b) Controverted claims belonging to claimants residing in reciprocal states may either be proved in this state, or if ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceeding, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in section seventeen, article ten of this chapter with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

§33-24-25. Proof of claims.

(a) All claims against a corporation against which delinquency proceedings have begun shall set forth in reasonable detail the amount of the claim, or the basis upon which such amount can be ascertained, the facts upon which the claim is based, and the priorities
asserted, if any. All such claims shall be verified by the affidavit of the claimant, or someone authorized to act on his behalf and having knowledge of the facts, and shall be supported by such documents as may be material thereto.

(b) All claims filed in this state shall be filed with the receiver, whether domiciliary or ancillary, in this state, on or before the last date for filing as specified in this article.

(c) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or his attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file his objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

(d) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing by first class mail to the claimant or his attorney and to any other persons directly affected, not less than ten nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his recommendation. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

(e) At the hearing, all persons interested shall be entitled to appear and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

(a) In a delinquency proceeding against a corporation domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(b) The owners of special deposit claims against a corporation for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(c) The owner of a secured claim against a corporation for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the corporation on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this article or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amounts shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

§33-24-27. Order of distribution.

The priority of distribution of claims from the corporation estate shall be in accordance with the order
in which each class of claims is herein set forth. Every
claim in each class shall be paid in full or adequate
funds retained for such payment before the members of
the next class receive any payment. No subclasses shall
be established within any class. No claim by a policy-
holder or other creditor shall be permitted to circum-
vent the priority classes through the use of equitable
remedies. The order of distribution shall be:

(a) Class I. The costs and expenses of administration,
including, but not limited to, the following:

(1) The actual and necessary costs of preserving or
recovering the assets of the corporation;

(2) Compensation for all services rendered in the
liquidation;

(3) Any necessary filing fees;

(4) The fees and mileage payable to witnesses;

(5) Reasonable attorney’s fees; and

(6) All expenses incurred by the division of insurance
arising out of the enforcement of chapter thirty-three
and its regulations.

(b) Class II. Debts due to employees for compensation
under the provision of section thirty-four of this article.

(c) Class III. All claims for refund of unearned
premiums under nonassessable policies and all claims of
policyholders including such claims of the federal or any
state or local government for losses incurred and third
party claims of an insolvent insurer.

(d) Class IV. Claims of general creditors including
claims of ceding and assuming companies in their
capacity as such.

(e) Class V. Claims of the federal or any state or local
government. Claims, including those of any governmen-
tal body for a penalty or forfeiture, shall be allowed in
this class only to the extent of the pecuniary loss
sustained from the act, transaction, or proceeding out of
which the penalty or forfeiture arose, with reasonable
and actual costs occasioned thereby. The remainder of
such claims shall be postponed to the class of claims under subdivision (h) of this section.

(f) Class VI. Claims filed late or any other claims other than claims under subdivisions (g) and (h) of this section.

(g) Class VII. Surplus or contribution notes, or similar obligations and premium refunds on assessable policies.

Payments to members of domestic mutual corporations shall be limited in accordance with law.

§33-24-28. Attachment, garnishment or execution.

During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this state against a delinquent corporation or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

§33-24-29. Deposit of moneys collected.

The moneys collected by the commissioner in a proceeding under this article shall be from time to time deposited in one or more state or national banks, savings banks, or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking laws of this state. The commissioner may in his discretion deposit such moneys or any part thereof in a national bank or trust company as a trust fund.

§33-24-30. Exemption of commissioner from fees.

The commissioner shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him under this article, whether or not such paper
or instrument be executed by the commissioner or his
deputies, employees or attorneys of record and whether
or not it is connected with the commencement of any
action or proceeding by or against the commissioner, or
with the subsequent conduct of such action or proceed-
ing.

§33-24-31. Borrowing on pledge of assets.

For the purpose of facilitating the rehabilitation,
liquidation, supervision, conservation or dissolution of a
corporation pursuant to this article, the commissioner
may, subject to the approval of the court, borrow money
and execute, acknowledge and deliver notes or other
evidences of indebtedness therefor and secure the
repayment of the same by the mortgage, pledge,
assignment, transfer in trust, or hypothecation of any or
all of the property, whether real, personal or mixed, of
such corporation, and the commissioner, subject to the
approval of the court, shall have power to take any and
all other action necessary and proper to consummate
any such loan and to provide for the repayment thereof.
The commissioner shall be under no obligation person-
ally or in his official capacity to repay any loan made
pursuant to this section.

§33-24-32. Date rights fixed on liquidation.

The rights and liabilities of the corporation and of its
creditors, policyholders, members, subscribers, and all
other persons interested in its estate shall, unless
otherwise directed by the court, be fixed as of the date
on which the order directing the liquidation of the
corporation is entered in the office of the clerk of the
court which made the order, subject to the provisions of
this article with respect to the rights of claimants
holding contingent claims.

§33-24-33. Voidable transfers.

(a) Any transfer of, or lien upon, the property of a
corporation which is made or created within four
months prior to the granting of an order to show cause
under this article with the intent of giving to any
creditor or of enabling him to obtain a greater percen-
6 tage of his debt than any other creditor of the same class
7 and which is accepted by such creditor having reason-
8 able cause to believe that such preference will occur,
9 shall be voidable.

10 (b) Every director, officer, employee, member, sub-
11 scriber, and any other person acting on behalf of such
12 corporation who shall be concerned in any such act or
13 deed and every person receiving thereby any property
14 of such corporation or the benefit thereof shall be
15 personally liable therefor and shall be bound to account
16 to the insurance commissioner.

17 (c) The insurance commissioner as a receiver in any
18 proceeding under this article may avoid any transfer of
19 or lien upon the property of a corporation which any
20 creditor, subscriber or member of such corporation
21 might have avoided and may recover the property so
22 transferred unless such person was a bona fide holder
23 for value prior to the date of the granting of an order
24 to show cause under this article. Such property or its
25 value may be recovered from anyone who has received
26 it except a bona fide holder for value as herein specified.

§33-24-34. Priority of claims for compensation.

1 (a) Compensation actually owing to employees other
2 than officers of an insurer, for services rendered within
3 three months prior to the commencement of a proceed-
4 ing against the corporation under this article, but not
5 exceeding three hundred dollars for each such employee,
6 shall be paid prior to the payment of any other debt or
7 claim, and in the discretion of the commissioner may be
8 paid as soon as practicable after the proceeding has been
9 commenced; except that at all times the commissioner
10 shall reserve such funds as will in his opinion be
11 sufficient for the expenses of administration.

12 (b) Such priority shall be in lieu of any other similar
13 priority which may be authorized by law as to wages
14 or compensation of such employees.

§33-24-35. Offsets.

1 (a) In all cases of mutual debts or mutual credits
2 between the corporation and another person in connec-
tion with any action or proceeding under this article, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (b) below.

(b) No offset shall be allowed in favor of any such person where (1) the obligation of the corporation to such person would not at the date of the entry of any liquidation order or otherwise, as provided in section thirty-two of this article, entitle him to share as a claimant in the assets of the corporation, or (2) the obligation of the corporation to such person was purchased by or transferred to such person with a view of its being used as an offset, or (3) the obligation of such person is to pay any assessment levied against the members of a mutual insurer.

§33-24-36. Allowance of claims.

(a) No contingent claim shall share in a distribution of the assets of a corporation which has been adjudicated to be insolvent by an order made pursuant to this article, except that such claim shall be considered, if properly presented, and may be allowed to share where:

(1) It does not prejudice the orderly administration of the liquidation, or

(2) There is a surplus and the liquidation is thereafter conducted upon the basis that such corporation is solvent.

(b) Where a corporation has been so adjudicated to be insolvent any person who has a cause of action against a member of such corporation under a policy issued by such corporation shall have the right to file a claim in the liquidation proceeding, regardless of the fact that such claim may be contingent, and such claim may be allowed:

(1) If it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such member, and

(2) If such person shall furnish suitable proof, unless
the court for good cause shown shall otherwise direct,
that no further valid claim against such corporation
arising out of his cause of action other than those
already presented can be made, and

(3) If the total liability of such corporation to all
claimants arising on behalf of its member shall be no
greater than its maximum liability would be were it not
in liquidation.

(c) (1) No judgment against such a member taken
after the date of entry of the liquidation order shall be
considered in the liquidation proceedings as evidence of
liability, or of the amount of damages, and no judgment
against a member taken by default or by collusion prior
to the entry of the liquidation order shall be considered
as conclusive evidence in the liquidation proceedings,
either of the liability of such member to such person
upon such cause of action or of the amount of damages
to which such person is therein entitled.

(2) A claim by a third party founded upon a policy
may be allowed without requiring such claim to be
reduced to judgment, provided it can be reasonably
inferred from the proof presented that the claimant
would be able to obtain a judgment upon his cause of
action against the member and that such judgment
would represent a liability of the corporation in
liquidation under the policy upon which such claim is
founded.

(d) No claim of any secured claimant shall be allowed
at a sum greater than the difference between the value
of the claim without security and the value of the
security itself as of the date of the entry of the order
of liquidation or such other date set by the court for
determining rights and liabilities as provided in section
thirty-two of this article unless the claimant shall
surrender his security to the commissioner, in which
event the claim shall be allowed in the full amount for
which it is valued.

(e) Whenever a creditor whose claim against a
corporation is secured, in whole or in part, by the
undertaking of another person fails to prove and file
that claim, the other person may do so in the creditor's name, and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution, however, until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such other person. The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association.

(f) Unless such claim is filed in the manner and within the time provided in section twenty-five, it shall not be entitled to filing or allowance, and no action may be maintained thereon. In the liquidation, pursuant to the provisions of this article, of any domestic corporation which has issued policies insuring the lives of persons, the commissioner shall, within thirty days after the last day set for the filing of claims, make a list of the persons who have not filed proofs of claim with him and to whom, according to the books of said insurer, there are amounts owing under such policies, and he shall set opposite the name of each such person the amount so owing to such person. Each person whose name shall appear upon said list shall be deemed to have duly filed, prior to the last day set for the filing of claims, a claim for the amount set opposite his name on said list.

(g) (1) Claims founded upon unliquidated or undetermined demands must be filed within the time limit provided in this article for the filing of claims, but claims founded upon such demands shall not share in any distribution to creditors of a person proceeded against under section twenty-seven until such claims have been definitely determined, proved and allowed. Thereafter, such claims shall share ratably with other claims of the same class in all subsequent distributions.

(2) An unliquidated or undetermined claim or demand
within the meaning of this article shall be deemed to be any such claim or demand upon which a right of action has accrued at the date of the order of liquidation and upon which the liability has not been determined or the amount thereof liquidated.

(h) (1) The commissioner may require, as a condition of payment of the final liquidation dividend to a lender, or his assignee, who has filed a claim for an unearned premium as an assignee of the member for valuable consideration:

(A) That such assignee of the member shall assign to the liquidator all his right, title, and interest in any unsatisfied debt of the member to such assignee, pertaining to policies of the insolvent corporation, remaining unpaid after crediting the final liquidation dividend, if the amount of such unsatisfied debt is less than one hundred dollars and one cent.

(B) The delivery to him of all the documents giving rise to such debt.

(2) The commissioner may determine whether or not it will be feasible to attempt to collect any such assigned debt. If he determines not to pursue collection of any such debt, he shall file a declaration to that effect with the liquidation court and be relieved of any further responsibility in respect to such debt.

(3) As used in this subsection, “member” means a natural person who purchased coverage from the insolvent corporation for personal or family purposes.

§33-24-37. Time within which claims to be filed.

(a) If upon the granting of an order of liquidation under this article or at any time thereafter during the liquidation proceeding, the corporation shall not be clearly solvent, the court shall, after such notice and hearing as it deems proper, make an order declaring the corporation to be insolvent. Thereupon regardless of any prior notice which may have been given to creditors, the commissioner shall notify all persons who may have claims against such corporation and who have not filed proper proofs thereof to present the same to him, at a
place specified in such notice, within four months from
the date of entry of such order, or if the commissioner
shall certify that it is necessary, within such longer time
as the court shall prescribe. The last day for filing of
proofs of claims shall be specified in the notice, and
notice shall be given in a manner to be determined by
the court.

(b) Proofs of claim may be filed subsequent to the date
specified, but no such claim shall share in the distribu-
tion of the assets until all allowed claims, proofs of
which have been filed before said date, have been paid
in full with interest.

§33-24-38. Assessment.

The provisions of sections thirty-one, thirty-two,
ths thirty-three, thirty-four and thirty-five, article ten of
this chapter shall apply to any corporation organized
under this article as a mutual corporation.

§33-24-39. Creating preference among creditors; dis-
bursement of assets.

(a) Within one hundred twenty days of a final
determination of insolvency of a corporation by the
circuit court, the commissioner shall make application
to the court for approval of a proposal to disburse assets
out of such company's marshaled assets, from time to
time as such assets become available. If the commis-
ioner determines that there are insufficient assets to
disburse, the application required by this section shall
be satisfied by a filing by the commissioner stating the
reasons for this determination.

(b) Such proposal shall at least include provisions for:

(1) Reserving amounts for the payment of expenses of
administration and of claims falling within the priori-
ties established in this article but only with respect to
such priorities higher than that of the associations;

(2) Disbursement of the assets marshaled to date and
subsequent disbursement of assets as they become
available.

(c) Action on the application may be taken by the
court provided the above required notice has been given
and provided that the commissioner's proposal complies
with subdivisions (1) and (2) of subsection (b) hereof.

§33-24-40. Distribution of assets.

Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

§33-24-41. Unclaimed and withheld funds.

All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, member or other person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest to the person entitled thereto or his legal representative upon proof satisfactory to the state treasurer of his right thereto. Any amount on deposit not claimed within six years from the discharge of the liquidator shall be deemed to have been abandoned and shall be escheated to the state of West Virginia without formal escheat proceedings and be deposited with the general fund.

§33-24-42. Immunity in receivership proceedings.

(a) No claim of any nature whatsoever that is directly related to the receivership of a corporation shall rise against, and no liability shall be imposed upon, the insurance commissioner, special deputy commissioner, or any person or entity acting as a receiver of a corporation, including surety, in rehabilitation, liquidation, supervision or conservation as a result of a court order issued on or after the first day of January, one thousand nine hundred eighty-five, for any statement made or actions taken or not taken in the good faith exercise of their powers under law. However, this
immunity shall not extend to acts or omissions which are malicious or grossly negligent. This qualified immunity extends to agents and employees of the receiver.

(b) Representation of special deputy commissioners. In any civil proceeding filed against a special deputy commissioner appointed pursuant to this subtitle, the special deputy commissioner shall be entitled to be represented by the attorney general.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-19. Administrative supervision.

Every health care corporation subject to the provisions of this article is subject to the provisions of article thirty-four of this chapter.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


Every health maintenance organization subject to the provisions of this article is subject to the provisions of article thirty-four of this chapter.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-6. Corporate organization.

(a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) An association captive insurance company or an industrial insured captive insurance company may be incorporated:

(1) As a stock insurer with its capital divided into shares and held by the stockholders; or

(2) As a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

(c) A captive insurance company shall have at least one incorporator who shall be a resident of this state.

(d) Before the articles of association are transmitted to the secretary of state, the incorporators shall petition
the commissioner to issue a certificate setting forth his finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at such finding the commissioner shall consider:

(1) The character, reputation, financial standing and purpose of the incorporators;

(2) The character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors; and

(3) Such other aspects as the commissioner shall deem advisable.

(e) The articles of association, such certificate and the organization fee shall be transmitted to the secretary of state, who shall thereupon record both the articles of incorporation and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.

(g) At least one of the members of the board of directors of a captive insurance company incorporated in this state shall be a resident of this state.

(h) Captive insurance companies formed under the provisions of this chapter shall have the privileges and be subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter. Captive insurance companies are subject to the provisions of article thirty-three and article thirty-four of this chapter. In the event of conflict between the provisions of said general corporation law and the provisions of this chapter, the latter shall control.

ARTICLE 32. RISK RETENTION ACT.

§33-32-3. Charter and license requirements for domestic groups.

A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of
this state and, except as provided elsewhere in this article, must comply with all of the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this state and with section four of this article to the extent such requirements are not a limitation on laws, rules, regulations or requirements of this state. Risk retention groups are subject to the provisions of article thirty-three and article thirty-four of this chapter. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance.

ARTICLE 34. ADMINISTRATIVE SUPERVISION.

§33-34-1. Definitions.
§33-34-3. Notice to comply with written requirements of commissioner, noncompliance and administrative supervision.
§33-34-4. Confidentiality of certain proceedings and records.
§33-34-5. Prohibited acts during periods of supervision.
§33-34-6. Administrative election of proceedings.
§33-34-7. Rules.
§33-34-8. Meetings between the commissioner and the special deputy supervisor.
§33-34-9. Special deputy supervisor appointed and expenses.
§33-34-10. Immunity.

§33-34-1. Definitions.

For the purposes of this article the following definitions shall apply:

(a) "Insurer" means and includes every person engaged as indemnitee, surety or contractor in the business of entering into contracts of insurance or of annuities as limited to:

Any insurer who is doing an insurer business, or has transacted insurance in this state, and against whom claims arising from that transaction may exist now or in the future;

This shall include, but not be limited to, any domestic insurer as defined in section six, article one of chapter
thirty-three and any foreign insurer as defined in section seven, article one of said chapter thirty-three including any stock insurer, mutual insurer, reciprocal insurer, farmers' mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, dental service corporation, health service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group.

(b) “Exceeded its powers” means the following conditions:

(1) The insurer has refused to permit examination of its books, papers, accounts, records or affairs by the commissioner, his deputy, employees, or duly commissioned examiners;

(2) A domestic insurer has unlawfully removed from this state books, papers, accounts or records necessary for an examination of the insurer;

(3) The insurer has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto;

(4) The insurer has neglected or refused to observe an order of the commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock or surplus;

(5) The insurer is continuing to transact business or write insurance after its license has been revoked or suspended by the commissioner;

(6) The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the commissioner or has without first having obtained written approval of the commissioner if approval is required by law;

(A) Totally reinsured its entire outstanding business; or

(B) Merged or consolidated substantially its entire property or business with another insurer.

(7) The insurer engaged in any transaction in which
it is not authorized to engage under the laws of this state; or

(8) The insurer refused to comply with a lawful order of the commissioner.

(c) "Consent" means agreement to administrative supervision by the insurer.


The provisions of this article shall only apply to:

(a) All domestic insurers; and

(b) Any other insurer doing business in this state whose state of domicile has asked the commissioner to apply the provisions of this article as regards such insurer.

§33-34-3. Notice to comply with written requirements of commissioner, noncompliance and administrative supervision.

(a) An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time it appears in the commissioner’s discretion that:

(1) The insurer’s condition renders the continuance of its business hazardous to the public or to its insureds;

(2) The insurer has or appears to have exceeded its powers granted under its certificate of authority and applicable law;

(3) The insurer has failed to comply with the applicable provisions of the insurance code;

(4) The business of the insurer is being conducted fraudulently; or

(5) The insurer gives its consent.

(b) If the commissioner determines that the conditions set forth in subsection (a) of this section exist, the commissioner shall:

(1) Notify the insurer of his determination;
(2) Furnish to the insurer a written list of his requirements to abate his determination; and

(3) Notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and effectuating the provisions of the article. Such action by the commissioner shall be subject to review pursuant to applicable state administrative procedures under article two of this chapter.

(c) If placed under administrative supervision, within sixty days the insurer shall comply with the requirements of the commissioner subject to the provisions of this article.

(d) If it is determined after notice and hearing that conditions giving rise to the supervision still exist at the end of the supervision period specified above, the commissioner may extend such period.

(e) If it is determined by the commissioner that conditions giving rise to the supervision have been corrected, said commissioner shall release the insurer from supervision.

§33-34-4. Confidentiality of certain proceedings and records.

Proceedings, hearings, notices, correspondence, reports, records and other information in the possession of the commissioner or the division relating to the supervision of any insurer shall not be subject to disclosure as provided in article one, chapter twenty-nine-b of this code.

§33-34-5. Prohibited acts during period of supervision.

An insurer may not engage in the following actions during the period of supervision, without the prior approval of the commissioner or his or her special deputy supervisor:

(1) Dispose of, convey, or encumber any of its assets or its business in force;

(2) Withdraw any of its bank accounts;

(3) Lend any of its funds;
(4) Invest any of its funds;
(5) Transfer any of its property;
(6) Incur any debt, obligation or liability;
(7) Merge or consolidate with another company;
(8) Approve new premiums or renew any policies;
(9) Enter into any new reinsurance contract or treaty;
(10) Terminate, surrender, forfeit, convert or lapse any insurance policy, certificate or contract, except for nonpayment of premiums due;
(11) Release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate or contract;
(12) Make any material change in management; or
(13) Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends, or other payments deemed preferential.

§33-34-6. Administrative election of proceedings.

Nothing contained in this article shall preclude the commissioner from initiating judicial proceedings to place an insurer in rehabilitation or liquidation proceedings or other delinquency proceedings, however designated under the laws of this state, regardless of whether the commissioner has previously initiated administrative supervision proceedings under this article against the insurer.

§33-34-7. Rules.

The division is empowered to adopt reasonable rules pursuant to chapter twenty-nine-a of this code deemed necessary for the implementation of this article.

§33-34-8. Meetings between the commissioner and the special deputy supervisor.

Notwithstanding any other provision of this code to the contrary, the commissioner may meet with a special deputy supervisor appointed under this article and with
the attorney or other representative of the special deputy supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of this article to carry out the commissioner's responsibilities as provided in this article or for the special deputy supervisor to carry out his or her duties as provided in this article.

§33-34-9. Special deputy supervisor appointed and expenses.

(1) During the period of supervision the division by contract or otherwise may appoint a special deputy supervisor to supervise the insurer. In the event that a special deputy supervisor is not appointed, the commissioner shall serve in such capacity.

(2) Each insurer which is subject to administrative supervision by the department shall pay to the division the expenses of its administrative supervision at the rates established by the division. Expenses shall include actual travel expenses, a reasonable living expense allowance, compensation of the special deputy supervisor or other persons employed or appointed by the division for purposes of the supervision, and necessary attendant administrative cost of the division directly related to the supervision. The travel expense and living expense allowance shall be limited to those expenses necessarily incurred in the performance of official duties relating to the administrative supervision and shall be paid by the insurer together with compensation upon presentation by the division to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the special deputy supervisor or other person employed or appointed by the division and approved by the division.

(3) All moneys collected from insurers for the expenses of administrative supervision shall be deposited into an account created in the state treasury designated the "Insurance Commissioner's Regulatory Trust Fund", and the division is authorized to make deposits when
required into this fund from moneys collected in the
commissioner's "Operating-Additional Fees" account.

(4) The division is authorized to pay to the special
deputy supervisor or person employed or appointed by
the division for purposes of the supervision out of such
trust fund, as created in subsection three of this section,
the actual travel expenses, reasonable living expense
allowance, and compensation in accordance with the
statement filed with the division by the special deputy
supervisor or other person, as provided in subsection (2),
upon approval by the division.

(5) The division may in whole or in part defer payment
of expenses due from the insurer pursuant to this section
upon a showing that payment would adversely impact
the financial condition of the insurer and jeopardize its
rehabilitation. The payment shall be made by the
insurer when the condition is removed and the payment
would no longer jeopardize the insurer's financial
condition.

§33-34-10. Immunity.
1 There shall be no liability on the part of, and no cause
2 of action of any nature shall arise against, the insurance
3 commissioner or the division or its employees or agents
4 thereof for any action taken by them in the performance
5 of their powers and duties under this article.

1 In the event any part or provision of this article be
2 held to be unconstitutional by any court of competent
3 jurisdiction, such holding and decision of the court shall
4 not affect the validity and constitutionality of the
5 remaining parts and provisions of this article.

ARTICLE 35. CRIMINAL SANCTIONS FOR FAILURE TO REPORT
IMPAIRMENT.

§33-35-1. Definitions.

§33-35-1. Definitions.
1 For the purposes of this article, the following words
2 shall mean:
(a) "Insurer" means any insurance company or other insurer licensed to do business in this state. This includes, but is not limited to, any domestic insurer as defined in section six, article one of this chapter and includes any domestic stock insurance company, mutual insurance company, reciprocal insurance company, farmers' mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, dental service corporation, health service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group.

(b) "Impaired" means a financial situation in which, based upon the requirements of this chapter for the preparation of the insurer's annual statement, the insurer's assets are less than the insurer's liabilities and the required reserves together with the insurer's minimum required capital and minimum required surplus as required by this chapter to be maintained to transact the type of business for which the insurer is authorized by this chapter to transact.

(c) "Chief executive officer" means the person, irrespective of their title, designated by the board of directors or board of trustees or other similar governing body of an insurer as the person charged with the responsibility and authority of administering and implementing the insurer's policies and procedures.


(a) Whenever an insurer is impaired, its chief executive officer shall immediately notify the commissioner in writing of such impairment and shall also immediately notify in writing all of the members of the board of directors, board of trustees or other similar governing body of the insurer.

(b) Any officer, director or trustee of an insurer shall immediately notify the person serving as chief executive officer of the impairment of such insurer in the event such officer, director, or trustee knows or has reason to know that the insurer is impaired.

(a) Any person who knowingly violates section two of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than fifty thousand dollars or be imprisoned in the county jail not more than one year, or both fined and imprisoned.

(b) Any person who knowingly:

(1) Conceals any property belonging to an insurer;

(2) Transfers or conceals in contemplation of a state insolvency proceeding his own property or property belonging to an insurer;

(3) Conceals, destroys, mutilates, alters or makes a false entry in any document which affects or relates to the property of an insurer or withholds any such document from a receiver, trustee or other officer of a court entitled to its possession; or

(4) Gives, obtains or receives a thing of value for acting or forbearing to act in any court proceeding, and any such act results in or contributes to an insurer becoming impaired or insolvent, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than five years.

CHAPTER 111

(Com. Sub. for H.B. 4501—By Delegates Susman and Ashley, By Request)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and six, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend article twelve by adding thereto two new sections, designated sections eight-a and twenty-nine, all relating to insurance; agents; brokers; solicitors; excess line; the discontinuance of the broker’s license and solicitor’s license classification; expanding representation of the board of insurance agent educa-
tion; fees charged to agents for the issuance of certain documents; the licensing of nonresident property and casualty agents; and the requirements that all agents, brokers, solicitors, excess line brokers and service representatives file and maintain their current mailing address with the insurance commissioner.

Be it enacted by the Legislature of West Virginia:

That sections two and six, article twelve, chapter thirty-three 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 eight-a and twenty-nine, all to read as follows:

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2. Qualifications.
§33-12-6. Fees.
§33-12-8a. Licensing of nonresident property casualty agents.
§33-12-29. Change of address.

§33-12-2. Qualifications.

1 For the protection of the people of West Virginia, the commissioner shall not issue, renew or permit to exist any agent's, broker's or solicitor's license except to an individual who:

5 (a) Is eighteen years of age or more.

6 (b) Is a resident of West Virginia, except that a broker's license shall be issued only to nonresidents, and except for nonresident life and accident and sickness agents as provided in section eight of this article.

10 Effective the first day of June, one thousand nine hundred ninety-one, brokers' licenses shall cease to exist. Licensing of nonresidents for property casualty will be made pursuant to section eight (a) of this article.

14 (c) Is, in the case of an agent applicant, appointed as agent by a licensed insurer for the kind or kinds of insurance for which application is made, subject to issuance of license, or, in the case of a solicitor applicant, appointed as solicitor by a licensed resident agent,
subject to issuance of license, except that on or after the first day of June, one thousand nine hundred ninety, no solicitor's license will be issued which is not a renewal of an existing license.

(d) Does not intend to use the license principally for the purpose, in the case of life or accident and sickness insurance, of procuring insurance on himself, members of his family or his relatives; or, as to insurance other than life and accident and sickness, upon his property or insurable interests of those of his family or his relatives or those of his employer, employees or firm, or corporation in which he owns a substantial interest, or of the employees of such firm or corporation, or on property or insurable interests for which the applicant or any such relative, employer, firm or corporation is the trustee, bailee or receiver. For the purposes of this provision, a vendor's or lender's interest in property sold or being sold under contract or which is the security for any loan, shall not be deemed to constitute property or an insurable interest of such vendor or lender.

(e) Satisfies the commissioner that he is trustworthy and competent. The commissioner may test the competency of an applicant for a license under this section by examination. Each examinee shall pay a twenty-five dollar examination fee for each examination to the commissioner who shall deposit said examination fee into the state treasury for the benefit of the state fund, general revenue. The commissioner may, at his discretion, designate an independent testing service to prepare and administer such examination subject to direction and approval by the commissioner, and examination fees charged by such service shall be paid by the applicant.

(f) For new agents first licensed on or after the first day of July, one thousand nine hundred eighty-nine, completes a program of insurance education as established below.

There is hereby created the board of insurance agent education. The board of insurance agent education shall consist of the commissioner of insurance and six members appointed by the commissioner. The members
appointed by the commissioner shall be two licensed property and casualty insurance agents, one licensed life insurance agent, one licensed health and accident insurance agent, one representative of a domestic insurance company, and one representative of a foreign insurance company: Provided, That no board shall be appointed that fails to include companies or agents for companies representing at least two thirds of the net written insurance premiums in the state. Each member shall serve a term of three years and shall be eligible for reappointment.

(1) The board of insurance agent education shall establish the criteria for a program of insurance education and submit the proposal for the approval of the commissioner on or before the thirty-first day of December of each year.

(2) The commissioner and the board, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, agents association, insurance trade association, or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this article: Provided, That any person who was a licensed agent, broker or solicitor on the first day of July, one thousand nine hundred eighty-nine, and who subsequently terminates the contractual relationship with the insurer or employing agent, may have that license renewed within five years of such termination without complying with the competency testing provisions of subdivision (e) or the education provisions of subdivision (f) of this section.

§33-12-6. Fees.

The fee for an agent's license shall be twenty-five dollars as provided in section thirteen, article three of this chapter, the fee for a solicitor's license shall be twenty-five dollars, and the fee for a broker's license shall be twenty-five dollars. The commissioner shall receive the following fees from insurance agents,
brokers, solicitors and excess line brokers: For letters of certification, five dollars; for letters of clearance, ten dollars; for duplicate license, five dollars. All fees and moneys so collected shall be used for the purposes set forth in section thirteen, article three of this chapter.

§33-12-8a. Licensing of nonresident property casualty agents.

(a) Nonresidents otherwise complying with the provisions of this chapter may be licensed as a property casualty agent but all policies issued as a result of solicitation on the part of such nonresident in this state shall be reported, placed, countersigned, and consummated by and through a duly licensed resident agent of the issuing insurer.

(b) An individual otherwise complying with the provisions of this chapter, who is a resident of another state and who is a licensed property casualty agent of such state, may be licensed as a nonresident property casualty agent in this state, if the state of residence of such nonresident has established, by law or regulation, like requirements for the licensing of a resident of this state as a nonresident property casualty agent. All policies issued as a result of solicitation by such nonresident property casualty agents shall be reported, placed, countersigned and consummated by and through a duly licensed resident agent of the issuing insurer.

§33-12-29. Change of address.

When applying for a license to act as an agent, broker, solicitor, excess line broker, or service representative, each applicant shall report his or her mailing address to the commissioner. An agent, broker, solicitor, excess line broker, or service representative shall notify the commissioner of any change in his or her mailing address within thirty days of such change. The commissioner shall maintain the mailing address of each agent, broker, solicitor, excess line broker, and service representative on file.
CHAPTER 112
(H. B. 4515—By Delegates Susman and Minard, By Request)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article fourteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the amount of group life insurance coverage permissible on dependents of the group member.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GROUP LIFE INSURANCE.

§33-14-7. Dependent coverage.

1 Any policy issued pursuant to sections two, four and five of this article may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

6 (a) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's funds or funds contributed by the employer or union, or from funds contributed by the insured employees or members, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least seventy-five percent of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members, all eligible employees or
members, excluding any as to whose family members
evidence of insurability is not satisfactory to the insurer,
must be insured with respect to their spouses and
children.

(b) The amounts of insurance must be based upon
some plan precluding individual selection either by the
employees or members or by the policyholder, employer
or union.

(c) Upon termination of the insurance with respect to
the members of the family of any employee or member
by reason of the employee's or member's termination of
employment, termination of membership in the class or
classes eligible for coverage under the policy, or death,
the spouse shall be entitled to have issued by the insurer,
without evidence of insurability, an individual policy of
life insurance without disability or other supplementary
benefits, providing application for the individual policy
shall be made, and the first premium paid to the
insurer, within thirty-one days after such termination,
subject to the requirements of paragraphs (a), (b) and
(c) of section sixteen of this article. If the group policy
terminates or is amended so as to terminate the
insurance of any class of employees or members and the
employee or member is entitled to have issued an
individual policy under section seventeen of this article,
the spouse shall also be entitled to have issued by the
insurer an individual policy, subject to the conditions
and limitations provided above. If the spouse dies within
the period during which he would have been entitled to
have an individual policy issued in accordance with this
provision, the amount of life insurance which he would
have been entitled to have issued under such individual
policy shall be payable as a claim under the group
policy, whether or not application for the individual
policy or the payment of the first premium therefor has
been made.

(d) Notwithstanding section fifteen of this article, only
one certificate need be issued for delivery to an insured
person if a statement concerning any dependent's
coverage is included in such certificate.
CHAPTER 113
(H. B. 4467—By Delegate Berry)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-d; to amend article sixteen, chapter thirty-three of said code by adding thereto a new section, designated section three-h; to amend article twenty-four of said chapter thirty-three by adding thereto a new section, designated section seven-c; to amend article twenty-five of said chapter by adding thereto a new section, designated section eight-b; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-b, all relating to insurance; and requiring third party reimbursement for rehabilitation services.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-d; that article sixteen, chapter thirty-three of said code be amended by adding thereto a new section, designated section three-h; that article twenty-four of chapter thirty-three of said code be amended by adding thereto a new section, designated section seven-c; that article twenty-five of chapter thirty-three of said code be amended by adding thereto a new section, designated section eight-b; and that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section eight-b, all to read as follows:

Article
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.
§33-15-4d. Third party reimbursement for rehabilitation services.

(a) Notwithstanding any provision of any policy, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on or after the first day of July, one thousand nine hundred ninety, make available as benefits to all subscribers and members coverage for rehabilitation services as hereinafter set forth.

(b) For purposes of this article and section, "rehabilitation services" includes those services which are designed to remediate patient's condition or restore patients to their optimal physical, medical, psychological, social, emotional, vocational and economic status. Rehabilitative services include by illustration and not limitation diagnostic testing, assessment, monitoring or treatment of the following conditions individually or in a combination:

1. Stroke;
2. Spinal cord injury;
3. Congenital deformity;
4. Amputation;
5. Major multiple trauma;
6. Fracture of femur;
7. Brain injury;
8. Polyarthritis, including rheumatoid arthritis;
9. Neurological disorders, including, but not limited to, multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy and Parkinson's disease;
10. Cardiac disorders, including, but not limited to, acute myocardial infarction, angina pectoris, coronary arterial insufficiency, angioplasty, heart transplantation, chronic arrhythmias, congestive heart failure, valvular heart disease;
11. Burns. Rehabilitation services do not include services for mental health, chemical dependency,
35 vocational rehabilitation, long-term maintenance or
36 custodial services.
37 (c) Rehabilitation services includes care rendered by
38 any of the following:
39 (1) A hospital duly licensed by the state of West
40 Virginia that meets the requirements for rehabilitation
41 hospitals as described in Section 2803.2 of the Medicare
42 Provider Reimbursement Manual, Part 1, as published
43 by the U. S. Health Care Financing Administration;
44 (2) A distinct part rehabilitation unit in a hospital
45 duly licensed by the state of West Virginia. The distinct
46 part unit must meet the requirements of Section 2803.61
47 of the Medicare Provider Reimbursement Manual, Part
48 1, as published by the U. S. Health Care Financing
49 Administration;
50 (3) A hospital duly licensed by the state of West
51 Virginia which meets the requirements for cardiac
52 rehabilitation as described in Section 35-25, Transmittal
53 41, dated August, 1989, as promulgated by the U. S.
54 Health Care Financing Administration.
55 (d) A policy, provision, contract, plan or agreement
56 may apply to rehabilitation services the same deducti-
57 bles, coinsurance and other limitations as apply to other
58 covered services.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3h. Third party reimbursement for rehabilitation
services.
1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this
3 article applies, any entity regulated by this article shall,
4 on or after the first day of July, one thousand nine
5 hundred ninety, make available as benefits to all
6 subscribers and members coverage for rehabilitation
7 services as hereinafter set forth.
8 (b) For purposes of this article and section, “rehabil-
9 itation services” includes those services which are
designed to remediate patient’s condition or restore
10 patients to their optimal physical, medical, psychologi-
Rehabilitative services include by illustration and not limitation diagnostic testing, assessment, monitoring or treatment of the following conditions individually or in a combination:

(1) Stroke;
(2) Spinal cord injury;
(3) Congenital deformity;
(4) Amputation;
(5) Major multiple trauma;
(6) Fracture of femur;
(7) Brain injury;
(8) Polyarthritis, including rheumatoid arthritis;
(9) Neurological disorders, including, but not limited to, multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy and Parkinson's disease;
(10) Cardiac disorders, including, but not limited to, acute myocardial infarction, angina pectoris, coronary arterial insufficiency, angioplasty, heart transplantation, chronic arrhythmias, congestive heart failure, valvular heart disease;
(11) Burns. Rehabilitation services do not include services for mental health, chemical dependency, vocational rehabilitation, long-term maintenance or custodial services.

(c) Rehabilitative services includes care rendered by any of the following:

(1) A hospital duly licensed by the state of West Virginia that meets the requirements for rehabilitation hospitals as described in Section 2803.2 of the Medicare Provider Reimbursement Manual, Part 1, as published by the U. S. Health Care Financing Administration;
(2) A distinct part rehabilitation unit in a hospital duly licensed by the state of West Virginia. The distinct part unit must meet the requirements of Section 2803.61
of the Medicare Provider Reimbursement Manual, Part
1, as published by the U. S. Health Care Financing
Administration;

(3) A hospital duly licensed by the state of West
Virginia which meets the requirements for cardiac
rehabilitation as described in Section 35-25, Transmittal
41, dated August, 1989, as promulgated by the U. S.
Health Care Financing Administration.

(d) A policy, provision, contract, plan or agreement
may apply to rehabilitation services the same deducti-
bles, coinsurance and other limitations as apply to other
covered services.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.

§33-24-7c. Third party reimbursement for rehabilitation
services.

(a) Notwithstanding any provision of any policy,
provision, contract, plan or agreement to which this
article applies, any entity regulated by this article shall,
on or after the first day of July, one thousand nine
hundred ninety, make available as benefits to all
subscribers and members coverage for rehabilitation
services as hereinafter set forth.

(b) For purposes of this article and section, "rehabil-
itation services" includes those services which are
designed to remediate patient's condition or restore
patients to their optimal physical, medical, psychologi-
cal, social, emotional, vocational and economic status.
Rehabilitative services include by illustration and not
limitation diagnostic testing, assessment, monitoring or
treatment of the following conditions individually or in
a combination:

(1) Stroke;

(2) Spinal cord injury;

(3) Congenital deformity;

(4) Amputation;
(5) Major multiple trauma;

(6) Fracture of femur;

(7) Brain injury;

(8) Polyarthritis, including rheumatoid arthritis;

(9) Neurological disorders, including, but not limited to, multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy and Parkinson's disease;

(10) Cardiac disorders, including, but not limited to, acute myocardial infarction, angina pectoris, coronary arterial insufficiency, angioplasty, heart transplantation, chronic arrhythmias, congestive heart failure, valvular heart disease;

(11) Burns. Rehabilitation services do not include services for mental health, chemical dependency, vocational rehabilitation, long-term maintenance or custodial services.

(c) Rehabilitative services includes care rendered by any of the following:

(1) A hospital duly licensed by the state of West Virginia that meets the requirements for rehabilitation hospitals as described in Section 2803.2 of the Medicare Provider Reimbursement Manual, Part 1, as published by the U. S. Health Care Financing Administration;

(2) A distinct part rehabilitation unit in a hospital duly licensed by the state of West Virginia. The distinct part unit must meet the requirements of Section 2803.61 of the Medicare Provider Reimbursement Manual, Part 1, as published by the U. S. Health Care Financing Administration;

(3) A hospital duly licensed by the state of West Virginia which meets the requirements for cardiac rehabilitation as described in Section 35-25, Transmittal 41, dated August, 1989, as promulgated by the U. S. Health Care Financing Administration.

(d) A policy, provision, contract, plan or agreement may apply to rehabilitation services the same deductibles, coinsurance and other limitations as apply to other covered services.
ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8b. Third party reimbursement for rehabilitation services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on or after the first day of July, one thousand nine hundred ninety, make available as benefits to all subscribers and members coverage for rehabilitation services as hereinafter set forth.

(b) For purposes of this article and section, "rehabilitation services" includes those services which are designed to remediate patient's condition or restore patients to their optimal physical, medical, psychological, social, emotional, vocational and economic status. Rehabilitative services include by illustration and not limitation diagnostic testing, assessment, monitoring or treatment of the following conditions individually or in a combination:

1. Stroke;
2. Spinal cord injury;
3. Congenital deformity;
4. Amputation;
5. Major multiple trauma;
6. Fracture of femur;
7. Brain injury;
8. Polyarthritis, including rheumatoid arthritis;
9. Neurological disorders, including, but not limited to, multiple sclerosis, motor neuron diseases, polynévropathie, muscular dystrophy and Parkinson's disease;
10. Cardiac disorders, including, but not limited to, acute myocardial infarction, angina pectoris, coronary arterial insufficiency, angioplasty, heart transplantation, chronic arrhythmias, congestive heart failure, valvular heart disease;
900  INSURANCE  [Ch. 113

(11) Burns. Rehabilitation services do not include services for mental health, chemical dependency, vocational rehabilitation, long-term maintenance or custodial services.

(c) Rehabilitative services includes care rendered by any of the following:

(1) A hospital duly licensed by the state of West Virginia that meets the requirements for rehabilitation hospitals as described in Section 2803.2 of the Medicare Provider Reimbursement Manual, Part 1, as published by the U. S. Health Care Financing Administration;

(2) A distinct part rehabilitation unit in a hospital duly licensed by the state of West Virginia. The distinct part unit must meet the requirements of Section 2803.61 of the Medicare Provider Reimbursement Manual, Part 1, as published by the U. S. Health Care Financing Administration;

(3) A hospital duly licensed by the state of West Virginia which meets the requirements for cardiac rehabilitation as described in Section 35-25, Transmittal 41, dated August, 1989, as promulgated by the U. S. Health Care Financing Administration.

(d) A policy, provision, contract, plan or agreement may apply to rehabilitation services the same deductibles, coinsurance and other limitations as apply to other covered services.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8b. Third party reimbursement for rehabilitation services.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on or after the first day of July, one thousand nine hundred ninety, make available as benefits to all subscribers and members coverage for rehabilitation services as hereinafter set forth.

(b) For purposes of this article and section, "rehabilitation services" includes those services which are
designated to remediate patient’s condition or restore patients to their optimal physical, medical, psychological, social, emotional, vocational and economic status. Rehabilitative services include by illustration and not limitation diagnostic testing, assessment, monitoring or treatment of the following conditions individually or in a combination:

(1) Stroke;
(2) Spinal cord injury;
(3) Congenital deformity;
(4) Amputation;
(5) Major multiple trauma;
(6) Fracture of femur;
(7) Brain injury;
(8) Polyarthritis, including rheumatoid arthritis;
(9) Neurological disorders, including, but not limited to, multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy and Parkinson’s disease;
(10) Cardiac disorders, including, but not limited to, acute myocardial infarction, angina pectoris, coronary arterial insufficiency, angioplasty, heart transplantation, chronic arrhythmias, congestive heart failure, valvular heart disease;
(11) Burns. Rehabilitation services do not include services for mental health, chemical dependency, vocational rehabilitation, long-term maintenance or custodial services.

(c) Rehabilitative services includes care rendered by any of the following:
(1) A hospital duly licensed by the state of West Virginia that meets the requirements for rehabilitation hospitals as described in Section 2803.2 of the Medicare Provider Reimbursement Manual, Part I, as published by the U.S. Health Care Financing Administration;
(2) A distinct part rehabilitation unit in a hospital
(3) A hospital duly licensed by the state of West Virginia which meets the requirements for cardiac rehabilitation as described in Section 35-25, Transmittal 41, dated August, 1989, as promulgated by the U. S. Health Care Financing Administration.

(d) A policy, provision, contract, plan or agreement may apply to rehabilitation services the same deductibles, coinsurance and other limitations as apply to other covered services.

CHAPTER 114
(H. B. 4126—By Delegate Deem)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article sixteen-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to group health insurance conversion; benefit levels; election to provide group coverage; notification of conversion privilege; and policies delivered outside state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16A. GROUP HEALTH INSURANCE CONVERSION.

§33-16A-14. Benefit levels; election to provide group coverage; notification of conversion privilege; policy delivered outside state.

1 If the benefit levels required in section nine of this
The insurer may elect to provide group insurance coverage in lieu of the issuance of a converted individual policy.

The insurer, prior to terminating the policy for any reason, shall notify each employee or member, or such employee's or member's spouse, child or dependent entitled to the conversion privilege under this article, at least forty-five days in advance of the termination, in writing, of the pending termination. The notice shall inform the employee or member of the conversion privilege provided in this article.

A notification of the conversion privilege shall also be included in each certificate of coverage.

A converted policy which is delivered outside this state must be on a form which could be delivered in such other jurisdiction as a converted policy had the group policy been issued in that jurisdiction.

CHAPTER 115

(Com. Sub. for S. B. 162—By Senators Burdette, Mr. President, and Harman, By Request of the Executive)

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen-a, relating to insurance; and providing a mechanism to regulate the declination and termination of property insurance policies and to provide for disclosure of the reasons for declinations and terminations.

Be it enacted by the Legislature of West Virginia:
ARTICLE 17A. PROPERTY INSURANCE DECLINATION, TERMINATION AND DISCLOSURE.

§33-17A-1. Purpose of article.
The purpose of this article is to regulate declinations, cancellations and refusals to renew certain policies of property insurance and to provide for disclosure of the reasons for these actions.

§33-17A-2. Scope of article.
This article applies to policies of property insurance, other than policies of inland marine insurance and policies of property insurance issued through a residual market mechanism, covering risks to property located in this state which take effect or are renewed after the effective date of this article and which insure any of the following contingencies:

(a) Loss of or damage to real property which is used predominantly for the residential purposes of the named insured and which consists of not more than four dwelling units; or

(b) Loss of or damage to personal property in which the named insured has an insurable interest where:

(1) The personal property is used for personal, family or household purposes; and
The personal property is within a residential dwelling.

§33-17A-3. Definitions.

(a) "Declination" is the refusal of an insurer to issue a property insurance policy on a written application or written request for coverage. For the purposes of this article, the offering of insurance coverage with a company within an insurance group which is different from the company requested on the application or written request for coverage or the offering of insurance upon different terms than requested in the application or written request for coverage is not considered a declination if such offering of such insurance is based upon any valid underwriting reason which involves a substantial increase in the risk. Each company or groups of companies instituting such transfer shall give notice in the manner provided in subsection (c), section four of this article, to the insured as to the reasons for such transfer.

(b) "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on policies of property insurance, subject to this article, whether the payments are directly payable to the insurer or its agent or indirectly payable to the insurer or its agent or indirectly payable under a premium finance plan or extension of credit. "Nonpayment of premium" includes the failure to pay dues or fees where payment of dues or fees is a prerequisite to obtaining or continuing property insurance coverage.

(c) "Renewal" or "to renew" means the issuance and delivery by an insurer at the end of a policy period of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of an existing policy beyond its policy period or term. For the purpose of this article, any policy period or term of less than six months is considered a policy period or term of six months, and any policy period or term of more than one year or any policy with no fixed...
(d) "Termination" means either a cancellation or nonrenewal of property insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term as set forth in subsection (c) of this section. For purposes of this article, the transfer of a policyholder between companies within the same insurance group is not considered a termination, if such transfer is based upon any valid underwriting reason which involves a substantial increase in the risk. Each company or group of companies instituting such transfer shall give notice in the manner provided in subsection (c), section four of this article, to the insured as to the reasons for such transfer. Requiring a reasonable deductible, reasonable changes in the amount of insurance or reasonable reductions in policy limits or coverage is not considered a termination if the requirements are directly related to the hazard involved and are made on the renewal date of the policy.

§33-17A-4. Notification and reasons for a transfer, declination or termination.

(a) Upon declining to insure any real or personal property, subject to this article, the insurer making a declination shall provide the insurance applicant with a written explanation of the specific reason or reasons for the declination at the time of the declination. The provision of such insurance application form by an insurer shall create no right to coverage on the behalf of the insured to which the insured is not otherwise entitled.

(b) A notice of cancellation of property insurance coverage by an insurer shall be in writing, shall be delivered to the named insured or sent by first class mail to the named insured at the last known address of the named insured, shall state the effective date of the cancellation and shall be accompanied by a written explanation of the specific reason or reasons for the cancellation.
(c) At least thirty days before the end of a policy period, as described in subsection (c), section three of this article, an insurer shall deliver or send by first class mail to the named insured at the last known address of the named insured, notice of its intention regarding the renewal of the property insurance policy. Notice of an intention not to renew a property insurance policy shall be accompanied by an explanation of the specific reasons for the nonrenewal: Provided, That no insurer shall fail to renew an outstanding property insurance policy which has been in existence for four years or longer except for the reasons as set forth in section five of this article; or for other valid underwriting reasons which involve a substantial increase in the risk.

§33-17A-5. Permissible cancellations.

After coverage has been in effect for more than sixty days or after the effective date of a renewal policy, a notice of cancellation may not be issued unless it is based on at least one of the following reasons:

(a) Nonpayment of premium;

(b) Conviction of the insured of any crime having as one of its necessary elements an act increasing any hazard insured against;

(c) Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy or in presenting a claim under the policy;

(d) Discovery of willful or reckless acts or omissions on the part of the named insured which increase any hazard insured against;

(e) The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed;

(f) A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;

(g) A determination by the commissioner that the
continuation of the policy would place the insurer in violation of the insurance laws of this state;

(h) Real property taxes owing on the insured property have been delinquent for two or more years and continue delinquent at the time notice of cancellation is issued;

(i) The insurer which issues said policy of insurance ceases writing the particular type or line of insurance coverage contained in said policy throughout the state or should such insurer discontinue operations within the state; or

(j) Substantial breach of the provisions of the policy.

§33-17A-6. Discriminatory terminations and declinations prohibited.

No insurer may decline to issue or terminate a policy or insurance subject to this article if the declination or termination is:

(a) Based upon the race, religion, nationality, ethnic group, age, sex or marital status of the applicant or named insured;

(b) Based solely upon the lawful occupation or profession of the applicant or named insured, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination: Provided, That this provision shall not apply to any insurer, agent or broker which limits its market to one lawful occupation or profession or to several related lawful occupations or professions;

(c) Based upon the age or location of the residence of the applicant or named insured unless the decision is for a business purpose which is not a mere pretext for unfair discrimination or unless the age or location materially affects the risk;

(d) Based upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured;

(e) Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism;
(f) Based upon the fact that the applicant has not
previously been insured; or
(g) Based upon the fact that the applicant did not
have insurance coverage for a period of time prior to the
application.


Hearings for the violation of any provision of this
article, and the administrative procedure prior to,
during and following these hearings, shall be conducted
in accordance with the provisions of article two of this
chapter.


If the commissioner determines in a final order that:
(a) An insurer has violated section five or six of this
article, he may require the insurer to:
(1) Accept the application or written request for
insurance coverage at a rate and on the same terms and
conditions as are available to other risks similarly
situated;
(2) Reinstate insurance coverage to the end of the
policy period; or
(3) Continue insurance coverage at a rate and on the
same terms and conditions as are available to other risks
similarly situated.
(b) Any person has violated any provision of this
article, he may:
(1) Issue a cease and desist order to restrain the
person from engaging in practices which violate this
article; and
(2) Assess a penalty against the person of up to five
thousand dollars for each willful and knowing violation
of this article.

§33-17A-9. Civil liability and actions.

(a) If the commissioner determines in a final order
that an insurer has violated section five or six of this
article, the applicant or named insured aggrieved by the
violation may bring an action in a court of competent
jurisdiction in this state to recover from the insurer any
loss, not otherwise recovered through insurance, which would have been paid under the insurance coverage that was declined or terminated in violation of this article.

(b) Any amount recovered under subsection (a) of this section may not be duplicative of any recovery obtained through the exercise of any other statutory or common law cause of action arising out of the same occurrence. No action under this section may be brought two years after the date of a final order of the commissioner finding a violation of section five or six of this article.

§33-17A-10. Immunity.

(a) There is no liability on the part of and no cause of action shall arise against the commissioner, any insurer or its authorized representative, or any licensed insurance agent or broker for furnishing information to an insurer as to reasons for a termination or declination, or for any communication giving notice of, or specifying the reasons for, a declination or termination.

(b) Subsection (a) above does not apply to statements made in bad faith with malice in fact.


If any provisions of this article or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

CHAPTER 116

(Com. Sub. for H. B. 4384—By Delegates Susman and Flanigan)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]
years of age or older who have successfully completed an approved accident prevention course.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-18. Reduction of premium charges for persons fifty-five years of age or older.

(a) Any rates, rating schedules or rating manuals for the liability, personal injury protection and collision coverages of a motor vehicle insurance policy submitted to or filed with the insurance commissioner shall provide for an appropriate reduction in premium charges as to such coverages when the principal operator and spouse on the covered vehicle is an insured who is fifty-five years of age or older and who has successfully completed a motor vehicle accident prevention course approved by the division of motor vehicles. Such reductions of premium rates shall be made in compliance with the provisions of subsections (a) and (b), section three of this article. Any discount used by an insurer shall be presumed appropriate unless credible data demonstrates otherwise.

(b) The premium reduction required by this section shall be effective for an insured and spouse for a three-year period after successful completion of the approved course, except that the insurer may require, as a condition of maintaining the discount, that the insured and spouse:

(1) Not be involved in an accident for which the insured or spouse is at fault;

(2) Not be convicted, plead guilty or nolo contendere to a moving traffic violation, or to a traffic related alcohol or narcotics offense; and

(3) Have maintained a driving record free of violations and liability for accidents for a three-year period prior to course completion.
(c) Upon successfully completing the approved course, each person shall be issued a certificate by the organization offering the course which shall be used to qualify for the premium discount required by this section.

(d) This section shall not apply in the event the approved course is taken as punishment specified by a court or other governmental entity resulting from a moving traffic violation.

(e) An insured shall only be entitled to a discount equal to the greater of the premium reduction required by this section or any discretionary discount offered by insurers to persons fifty-five years of age or older who have not completed the approved motor vehicle accident course and specifically shall not be entitled to more than one discount.

(f) Each participant shall take an approved course every three years to continue to be eligible for the reduction in premiums.

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CHAPTER 117
(S. B. 481—By Senator Hawse)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance; hospital service corporations, medical service corporations and dental service corporations; and requiring such corporations to provide coverage for mental illness.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

*§33-24-4. Exemptions; applicability of other laws.*

1 Every such corporation is hereby declared to be a scientific, nonprofit institution and as such exempt from the payment of all property and other taxes. Every such corporation, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner) except that under section nine of article two examinations shall be conducted at least once every four years, article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article six, section thirty-four (fee for form and rate filing), article ten (rehabilitation and liquidation), article eleven (unfair practices and frauds), article twelve (agents, brokers and solicitors) except that the agent’s license fee shall be five dollars, article fifteen-a (long-term care insurance), section three-a, article sixteen (mental illness), section three-c, article sixteen (group accident and sickness insurance), section three-d, article sixteen (medicare supplement), section three-f, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder), article twenty-eight (individual accident and sickness insurance minimum standards) and article thirty-three (annual audited financial report); and no other provision of this chapter shall apply to such corporations unless specifically made applicable by the provisions of this article.

If, however, any such corporation shall be converted into a corporation organized for a pecuniary profit, or if it shall transact business without having obtained a license as required by section five of this article, it shall thereupon forfeit its right to these exemptions.

*Clerk’s Note: §33-24-4 was also amended by H. B. 4195 (Chapter 110), which passed subsequent to this act.*
CHAPTER 118  
(Com. Sub. for S. B. 15—By Senator Holliday) 

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.] 

AN ACT to amend chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-b, relating to creating the home detention act; providing for a short title; providing definitions; providing the requirements for an order for home detention; describing circumstances for not granting an order for home detention; requiring fees; mandating the creation of a special fund; making offender responsible for certain expenses; describing information to be provided law-enforcement agencies; prescribing penalties for violation of conditions of an order, procedures therein; and providing that provisions may be applied as an alternate means of detention. 

Be it enacted by the Legislature of West Virginia: 

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

CHAPTER 62. CRIMINAL PROCEDURE. 

ARTICLE 11B. HOME DETENTION ACT. 

This article may be cited as the "Home Detention Act."

1 This article applies to adult offenders and to juveniles who have committed a delinquent act that would be a crime if committed by an adult.


1 As used in this article:

2 (1) “Home” means the actual living area of the temporary or permanent residence of an offender. The term includes, but is not limited to, a hospital, health care facility, hospice, group home, residential treatment facility and boarding house.

3 (2) “Monitoring device” means an electronic device that is:

4 (A) Limited in capability to the recording or transmitting of information regarding an offender's presence or absence from the offender's home;

5 (B) Minimally intrusive upon the privacy of the offender or other persons residing in the offender's home; and

6 (C) Incapable of recording or transmitting:

7 (i) Visual images;

8 (ii) Oral or wire communications or any auditory sound; or

9 (iii) Information regarding the offender's activities while inside the offender's home.

10 (3) “Offender” means any adult convicted of a crime punishable by imprisonment or detention in a county jail or state penitentiary; or a juvenile convicted of a delinquent act that would be a crime punishable by imprisonment or incarceration in the state penitentiary or county jail, if committed by an adult.

§62-11B-4. Home detention; period of home detention; applicability.

1 (a) As a condition of probation or as an alternative
sentence to another form of incarceration, a court may
order an offender confined to the offender's home for a
period of home detention.

(b) The period of home detention may be continuous
or intermittent, as the court orders. However, the
aggregate time actually spent in home detention may
not exceed the term of imprisonment or incarceration
prescribed by this code for the offense committed by the
offender.

§62-11B-5. Requirements for order for home detention.

An order for home detention of an offender under
section four of this article shall include, but not be
limited to, the following:

(1) A requirement that the offender be confined to the
offender's home at all times except when the offender
is:

(A) Working at employment approved by the court or
traveling to or from approved employment;

(B) Unemployed and seeking employment approved
for the offender by the court;

(C) Undergoing medical, psychiatric, mental health
treatment, counseling or other treatment programs
approved for the offender by the court;

(D) Attending an educational institution or a program
approved for the offender by the court;

(E) Attending a regularly scheduled religious service
at a place of worship;

(F) Participating in a community work release or
community service program approved for the offender
by the court; or

(G) Engaging in other activities specifically approved
for the offender by the court.

(2) Notice to the offender of the penalties which may
be imposed if the court subsequently finds the offender
to have violated the terms and conditions in the order
of home detention.
§62-11B-6. Circumstances under which home detention may not be ordered.

(a) A court may not order home detention for an offender unless the offender agrees to abide by all of the requirements set forth in the court's order issued under this article.

(b) A court may not order home detention for an offender who is being held under a detainer, warrant or process issued by a court of another jurisdiction.


All home detention fees shall be deposited with the
circuit clerk who shall deposit the fees into the county
sheriff's special adult or juvenile probation services
fund, which fund is hereby mandated. The county
commission shall appropriate money from the fund to
administer a home detention program, including the
purchase of monitoring devices and other supervision
expenses, and may as necessary supplement the fund
with additional appropriations.


An offender ordered to undergo home detention under
section four of this article is responsible for providing
his own food, housing, clothing, medical care and other
treatment expenses. The offender is eligible to receive
government benefits allowable for persons on probation,
parole or other conditional discharge from confinement.

§62-11B-9. Violation of order of home confinement;
procedures; penalties.

(a) If at any time during the period of home detention
there shall be reasonable cause to believe that a
participant in a home detention program has violated
the terms and conditions of the court's home confine-
ment order, he or she shall be subject to the procedures
and penalties set forth in section ten, article twelve of
this chapter.

(b) If at any time during the period of home detention
there shall be reasonable cause to believe that a
participant has violated the terms and conditions of the
court's order of home detention and said participant's
participation was imposed as an alternative sentence to
another form of incarceration, said participant shall be
subject to the same procedures involving revocation as
would a probationer charged with a violation of the
order of home detention. Any participant under an order
of home detention shall be subject to the same penalty
or penalties, upon the court's finding of a violation of the
order of home detention, as he or she could have received
at the initial disposition hearing: Provided, That the
participant shall receive credit towards any sen-


22  sentence imposed after a finding of violation for the time
23  spent in home confinement.

§62-11B-10. Information to be provided law-enforcement agencies.

A probation department charged by a court with
supervision of offenders ordered to undergo home
detention shall provide all law-enforcement agencies
having jurisdiction in the place where the probation
department is located with a list of offenders under
home detention supervised by the probation department.
The list must include the following information about
each offender:

1  (1) The offender's name, any known aliases, and the
location of the offender's home detention;

2  (2) The crime for which the offender was convicted;

3  (3) The date the offender's home detention expires;

4  and

5  (4) The name, address and telephone number of the
6  offender's supervising probation officer for home
7  detention.


The provisions of this article are not to be considered
exclusive nor do they supersede existing statutes
relating to the detention of adult or juvenile offenders.
The provisions of this article may be applied at the
discretion of the trial court as an alternate means of
detention.

CHAPTER 119
(Com. Sub. for H. B. 4666—By Delegate Spencer)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]
amended; and to amend and reenact section three, article fourteen, chapter eight of said code, all relating to prohibiting off-duty employment of law-enforcement officers in labor disputes.

Be it enacted by the Legislature of West Virginia:

That sections fifteen-a and nineteen-a, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article fourteen, 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 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-15a. Additional part-time police work permitted.

Deputy sheriffs shall be allowed to engage in police work for pay in addition to their regular work as a deputy sheriff. However, they may not engage in such police work for any party engaged in or involved in any labor trouble or dispute between employer and employee.

The deputy sheriffs civil service commission shall prescribe and enforce rules and regulations fixing the terms and conditions under which deputy sheriffs may engage in police work in addition to their normal duties as deputy sheriffs. These rules and regulations must prohibit discrimination, as far as practicable, between deputy sheriffs with regard to the allocation of additional police work. No sheriff may have a direct or indirect pecuniary interest in any outside employment. A deputy sheriff performing additional police work shall wear an identifying armband to indicate special duty.
§7-14-19a. Additional police work for deputy sheriffs in noncivil service counties.

The sheriff of any county with a population of less than twelve thousand five hundred which has not adopted civil service for deputy sheriffs pursuant to the provisions of section nineteen, article fourteen, chapter seven, may allow his deputy sheriffs to do additional police work in addition to their normal duties as a deputy sheriff. However, they may not be allowed to engage in such police work for any party engaged in or involved in any labor trouble or dispute between employer and employee. Before such sheriff shall be allowed to grant such additional police work to his deputy sheriffs, he must prepare a plan setting forth the terms and conditions under which his deputy sheriffs may engage in additional police work. Such terms and conditions must prohibit discrimination between deputies with regard to the allocation of additional police work. Such plans shall be submitted to the county commission of such county and shall be subject to the approval of said county commission. No sheriff may have a direct or indirect pecuniary interest in any outside employment. A deputy sheriff performing additional police work shall wear an identifying armband to indicate special duty.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-3. Powers, authority and duties of law-enforcement officials and policemen.

The chief and any member of the police force or department of a municipality and any municipal sergeant shall have all of the powers, authority, rights and privileges within the corporate limits of the municipality with regard to the arrest of persons, the
collection of claims, and the execution and return of any
search warrant, warrant of arrest or other process,
which can legally be exercised or discharged by a
deputy sheriff of a county. In order to arrest for the
violation of municipal ordinances and as to all matters
arising within the corporate limits and coming within
the scope of his official duties, the powers of any chief,
policeman or sergeant shall extend anywhere within the
county or counties in which the municipality is located,
and any such chief, policeman or sergeant shall have the
same authority of pursuit and arrest beyond his normal
jurisdiction as has a sheriff. For an offense committed
in his presence, any such officer may arrest the offender
without a warrant and take him before the mayor or
police court or municipal court to be dealt with
according to law. He and his sureties shall be liable to
all the fines, penalties and forfeitures which a deputy
sheriff is liable to, for any failure or dereliction in such
office, to be recovered in the same manner and in the
same courts in which such fines, penalties and forfei-
tures are recovered against a deputy sheriff. In addition
to the mayor, or police court judge or municipal court
judge, if any, of a city, the chief of police of any
municipality and in the absence from the station house
of the chief of police the captains of police and lieuten-
ants of police shall each have authority to administer
oaths to complainants and to issue arrest warrants
thereon for all violations of the ordinances of such
municipality.

It shall be the duty of the mayor and police officers
of every municipality and any municipal sergeant to aid
in the enforcement of the criminal laws of the state
within the municipality, independently of any charter
provision or any ordinance or lack of an ordinance with
respect thereto, and to cause the arrest of or arrest any
offender and take him before a magistrate to be dealt
with according to the law. Failure on the part of any
such official or officer to discharge any duty imposed by
the provisions of this section shall be deemed official
misconduct for which he may be removed from office.
Any such official or officer shall have the same authority
to execute a warrant issued by a magistrate, and the
same authority to arrest without a warrant for offenses committed in his presence, as a deputy sheriff.

No officer or member of the police force or department of a municipality may aid or assist either party in any labor trouble or dispute between employer and employee. They shall in such cases see that the statutes and laws of this state and municipal ordinances are enforced in a legal way and manner. Nor shall he or she engage in off-duty police work for any party engaged in or involved in such labor dispute or trouble between employer and employee.

The chief of police shall be charged with the keeping and security of the jail and at any time that one or more prisoners are being held in the jail, he shall require that the jail be attended by a police officer or other responsible person.

CHAPTER 120
(S. B. 243—By Senator Jackson)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legislative authorization of legislative rules proposed by various executive agencies following review by the legislative rule-making review committee and recommended by the legislative rule-making review committee as filed, with modifications as filed, as amended, or as directed and authorized; declaration by the Legislature of legislative rules authorized as complying with the intent of the statute under which the legislative rule was proposed.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
CHAPTER 64. LEGISLATIVE RULES.

Article
2. Authorization for Department of Administration to Promulgate Legislative Rules.
3. Authorization for Department of Commerce, Labor and Environmental Resources to Promulgate Legislative Rules.
5. Authorization for Department of Health and Human Resources to Promulgate Legislative Rules.
6. Authorization for Department of Public Safety to Promulgate Legislative Rules.
7. Authorization for Department of Tax and Revenue to Promulgate Legislative Rules.
8. Authorization for Department of Transportation to Promulgate Legislative Rules.

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

§64-1-2. Effective date of rules.

§64-1-3. Technical deficiencies waived.

§64-1-1. Legislative authorization.

Under the provisions of article three, chapter twenty-nine-a of the code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in articles two through nine of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. The Legislature further declares that all rules now or hereafter authorized under articles two through nine of this chapter are within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret.

§64-1-2. Effective date of rules.

The effective date of the legislative rules authorized in articles two through nine of this chapter shall be governed by the provisions of section thirteen, article three, chapter twenty-nine-a, unless the agency promulgating the rules establishes an effective date which is earlier than that provided by section thirteen, article three, chapter twenty-nine-a, in which case the effective date established by the agency shall control, unless the
9 Legislature in the bill authorizing the rules establishes an effective date for such rules in which case the effective date established by the Legislature shall control.

§64-1-3. Technical deficiencies waived.

1 The Legislature further declares each legislative rule now or hereafter authorized under articles two through nine of this chapter to have been validly promulgated notwithstanding any failure to comply with any requirement of chapter twenty-nine-a for the promulgation of rules at any stage of the promulgation process prior to authorization by the Legislature in articles two through nine of this chapter.

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Employee suggestion award board.

§64-2-2. Division of finance and administration.

§64-2-3. Division of personnel.

§64-2-4. Public employees insurance agency.

§64-2-5. Board of risk and insurance management.

§64-2-6. Teachers retirement board.

§64-2-1. Employee suggestion award board.

1 The legislative rules filed in the state register on the twenty-third day of July, one thousand nine hundred eighty-two, relating to the employee suggestion award board (public employee suggestion program), are authorized.

§64-2-2. Division of finance and administration.

1 The legislative rules filed in the state register on the eighteenth day of November, one thousand nine hundred eighty-eight, modified by the director of the purchasing division of the department of finance and administration to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of January, one thousand nine hundred eighty-nine, relating to the director of the purchasing division of the department of finance and administration (purchasing division), are authorized.
§64-2-3. Division of personnel.

(a) The legislative rules filed in the state register on the nineteenth day of November, one thousand nine hundred eighty-six, modified by the civil service commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the civil service commission (civil service system), are authorized.

(b) The legislative rules filed in the state register on the first day of November, one thousand nine hundred eighty-eight, modified by the civil service commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the civil service commission (civil service system), are authorized with the amendments set forth below:

On page fifteen, section 5.05(d), after the words “established in” by striking out the remainder of the sentence and inserting in lieu thereof the words “Chapter 29-6A of the Code of West Virginia, as amended.”

On page fifteen, section 5.06, after the words “established in” by striking out the remainder of the sentence and inserting in lieu thereof the words “Chapter 29-6A of the Code of West Virginia, as amended.”

And

On pages sixteen and seventeen by deleting all of section 5.07.

And,

On page 46, section 13(f) line 2 by striking the words “previously held”.

§64-2-4. Public employees insurance agency.

(a) The legislative rules filed in the state register on the sixteenth day of May, one thousand nine hundred eighty-three, relating to the public employees insurance
board (public employees insurance plan), are authorized
with the amendments set forth below:

§6.03.—In the second sentence delete the words
"Executive Secretary" and insert the word "Board".

(b) The legislative rules filed in the state register on
the twenty-seventh day of September, one thousand nine
hundred eighty-four, modified by the public employees
insurance board to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the fourth day of March, one thousand nine
hundred eighty-five, relating to the public employees
insurance board (credit for accrued sick/annual leave
and optional life insurance), are authorized.

(c) The legislative rules filed in the state register on
the twelfth day of September, one thousand nine
hundred eighty-four, relating to the public employees
insurance board (late enrollment in the public em­
ployees insurance program), are authorized with the
amendments set forth below:

§2.01(b) shall read as follows:

"(b) 'children' shall mean unmarried children between
birth and age nineteen and shall include: (1) The
employee's natural children, (2) legally adopted child­
ren, including children living with the employee during
the period of probation, (3) stepchildren residing in the
employee's household and (4) other children fully
dependent upon the employee for support and mainte­
nance and residing in the household of which the
employee is head and actually being supported by the
employee. Children may be included after the attain­
ment of age nineteen, but not beyond the attainment of
age twenty-five, if they are enrolled as full-time
students, are unmarried, and are dependent upon the
employee for support. Children may also be included
after the attainment of age nineteen while incapable of
self-support because of mental illness, mental retarda­
tion or a permanent physical disability, if the child was
dependent upon the employee for support and mainte­
nance at the onset of the mental illness, mental
retardation or permanent physical disability. For the
purpose of this section, mental illness includes addiction as defined in Code 27-1-11 as is defined as a manifestation in a person of significantly impaired capacity to maintain acceptable levels of functioning in the areas of intellect, emotion and physical well-being, only if such impairment renders the person dangerous to himself or others or such person is substantially unable to protect himself from significant hazard: Provided, That children included because of addiction as hereinbefore defined shall not be included beyond the attainment of age twenty-five."

On page six, at 4.01(g)(2) shall read as follows:

"The end of any 12 month period after enrollment during which no diagnosis or treatment is received, and no expenses are incurred for care of the injury, illness or related conditions."

Also, insert a new section, designated section 5.07, to read as follows:

"5.07.—Coverage for dependents shall terminate at the end of the month in which they no longer meet the definition of ‘dependent’ as set forth in section 2.01 of these rules."

§64-2-5. Board of risk and insurance management.

(a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the board of risk and insurance management (mine subsidence), are authorized.

(b) The legislative rules filed in the state register on the twenty-sixth day of November, one thousand nine hundred eighty-five, modified by the state board of risk and insurance management to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-six, relating to the state board of risk and insurance management (mine subsidence insurance program), are authorized.

(c) The legislative rules filed in the state register on
the twenty-eighth day of July, one thousand nine
hundred eighty-nine, modified by the board of risk and
insurance management to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the seventeenth day of October, one
thousand nine hundred eighty-nine, relating to the
board of risk and insurance management (West Virginia
board of risk and insurance management), are autho-
rized.

§64-2-6. Teachers retirement board.

The legislative rules filed in the state register on the
eleventh day of August, one thousand nine hundred
eighty-two, relating to the teachers retirement board,
are authorized with the following amendments:

Section VI, subsection 6, D, (a)(ii) of the rules is to be
amended on line two by striking out the words “(3) thru
(7)” and inserting in lieu thereof the words “(3) thru
(13)”; Section VII, subsection 7, B, (c) of the rules is to
be amended on line three after the word “100” by
striking out the word “consecutive,” and by redesignat-
ing the subsection as subsection “(a)”; and Section X,
subsection 10, A, (c), of the rules is to be amended on
line one after the word “physicians,” by striking out the
words “of member’s choice,” and inserting in lieu thereof
the words “one selected by the Board and one selected
by the member”.

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COM-
MERCE, LABOR AND ENVIRONMENTAL RE-
OURCES TO PROMULGATE LEGISLATIVE
RULES.

§64-3-1. Air pollution control commission.
§64-3-2. Division of banking.
§64-3-3. Division of commerce.
§64-3-4. Division of energy.
§64-3-5. Enterprise zone authority.
§64-3-6. West Virginia industrial and trade jobs development corporation.
§64-3-7. Division of labor.
§64-3-8. Division of natural resources.
§64-3-10. Water resources board.
§64-3-11. Economic development authority.
§64-3-1. Air pollution control commission.

(a) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to the air pollution control commission (series VII), are authorized.

(b) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to the air pollution control commission (series XIX), are authorized.

(c) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-three, relating to the air pollution control commission (emission standards for hazardous air pollutants) (series XV), are authorized.

(d) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-three, relating to the air pollution control commission (standards of performance for new stationary sources) (series XVI), are authorized.

(e) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the air pollution control commission (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities)(series XXV), are authorized with the amendments set forth below:

Page 3, §1.06, change the § title from “Enforcement” to “Procedure”; place an “(a)” in front of the existing paragraph and add the following:

“(b) Permit applications filed pursuant to this regulation shall be processed in accordance with the permitting procedures as set forth in code §20-5E of this regulation. Permit procedures set forth in code §16-20 and any other regulation of this commission are not applicable to any permit application filed pursuant to this regulation.”

Such rules shall also include a section which shall read as follows:
“The commission shall report to the legislative rule-making review committee as required by that committee, but in no event later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty-five. Such report shall include information regarding the commission's data gathering efforts, the development of compliance programs, the progress in implementation, and such other matters as the committee may require, pertaining to the regulations hereby authorized.”

(f) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-four, relating to the air pollution control commission (permits for construction and modification of stationary sources of air pollution for the prevention of significant deterioration) (series XIV), are authorized.

(g) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-eight, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the air pollution control commission (prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities), are authorized.

(h) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-eight, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the air pollution control commission (good engineering practice as applicable to stack heights), are authorized.

(i) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-eight, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in
the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the air pollution control commission (TP-2, compliance test procedures for regulation 2—to prevent and control particulate air pollution from combustion of fuel in indirect heat exchangers), are authorized.

(j) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-nine, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety, relating to the air pollution control commission (ambient air quality standards for sulfur oxides and particulate matter), are authorized.

(k) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-nine, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety, relating to the air pollution control commission (prevention of air pollution emergency episodes), are authorized.

(l) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-nine, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety, relating to the air pollution control commission (permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration), are authorized.

(m) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-nine, relating to the air pollution control commission (standards of performance for new stationary sources), are authorized.
(n) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-nine, relating to the air pollution control commission (emission standards for hazardous air pollutants), are authorized.

(o) The legislative rules filed in the state register on the sixteenth day of October, one thousand nine hundred eighty-nine, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety, relating to the air pollution control commission (prevention and control of emissions of toxic air pollutants), are authorized.

§64-3-2. Division of banking.

(a) The legislative rules filed in the state register on the eleventh day of June, one thousand nine hundred eighty-two, relating to commissioner of banking (communication terminals and interchange systems), are authorized.

(b) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-three, relating to the commissioner of banking (consumer credit sales), are authorized.

(c) The legislative rules filed in the state register on the nineteenth day of August, one thousand nine hundred eighty-three, relating to the commissioner of banking (legal lending limit), are authorized.

(d) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-six, modified by the commissioner of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-six, relating to the commissioner of banking (implementing the West Virginia community reinvestment act), are authorized.

(e) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred
hundred eighty-eight, modified by the commissioner of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of December, one thousand nine hundred eighty-eight, relating to the commissioner of banking (subsidiary bank holding the stock of its parent company as collateral), are authorized.

§64-3-3. Division of commerce.

(a) The legislative rules filed in the state register on the eighteenth day of February, one thousand nine hundred eighty-seven, modified by the commissioner of commerce to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of October, one thousand nine hundred eighty-seven, relating to the commissioner of commerce (public use of West Virginia state parks, forests, and hunting and fishing areas), are authorized with the amendments as set forth below:

On page 1, section 2.1 after the words “fishing area.” add “This rule does not apply to the erection of temporary blinds or tree stands in public hunting areas.”

And, on page 3, section 2.12 after the word “guests” by adding “licensed hunters and fishermen while hunting or fishing”.

And, on page 5, section 2.22 by adding at the end of the section the following sentence: “Any person may apply to the Superintendent of the park for a special event permit and pay an application fee for use of firearms during historical reenactments, or the use of hay, straw, boughs, pine needles or similar materials for special events. The Park Superintendent may issue a permit to limit areas of use of any of these exceptions and require damage assessments, if necessary.”

On page 8, section 4.5 by deleting the word “water” and inserting in lieu thereof the word “swimming pool”, and on page 9 section 4.5 after the word “water.” add the following: “These restrictions do not apply to swimming areas which are natural bodies of water.”
(b) The legislative rules filed in the state register on the thirteenth day of September, one thousand nine hundred eighty-nine, modified by the commissioner of commerce to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of December, one thousand nine hundred eighty-nine, relating to the commissioner of commerce (public use of state recreational areas), are authorized with the following amendment:

On page 9, after the word "Code", by adding a new section, designated section six, to read as follows:

"144-1-6. Contracts, public hearings and procedural requirements.

6.1 The commissioner may not solicit nor enter into contracts, except for the operation of a commissary, restaurant or marina for a period of less than ten years, until a master plan for the administration of that state park or recreation area has been developed. He or she shall supervise the preparation of the plan and may utilize the staff of the division of natural resources or any other state governmental agency whose expertise he or she desires to enlist in the preparation thereof. The commissioner shall solicit public participation and involvement in all stages of the preparation of the plan and in the preparation of any requests for proposals for the development of a revenue producing facility, as described herein, with a contract duration in excess of ten years. The plan shall be consistent with the environmental, recreational and cultural goals of the state park and recreation areas system of the state and, to the extent practicable, with the public comments and input received during plan development.

6.2 If the commissioner intends to accept a proposal for the development of a revenue producing facility, as described herein, such proposal shall be made available to the public in a convenient location in the county wherein the proposed facility may be located. The commissioner shall publish a notice of the proposal by Class I legal advertisement in accordance with the
provisions of article three, chapter fifty-nine of this code. The publication area is the county in which the proposed facility would be located. Any citizen may communicate by writing to the commissioner his or her opposition or approval to such proposal within a period of not less than thirty days from the date of the publication of notice.

6.3 No contract of a term greater than ten years may be entered into by the commissioner until a public hearing is held in the vicinity of the location of the proposed facility with at least two weeks notice of such hearing by Class I publication pursuant to section two, article three, chapter fifty-nine of this code. The commissioner shall make findings prior to rendering a decision on any proposed contract of a duration of more than ten years. All studies, records, documents and other materials which are considered by the commissioner in making such findings as required herein shall be made available for public inspection at the time of the publication of the notice of public hearing and at a convenient location in the county where the proposed development may be located. Persons attending such hearings shall be permitted a reasonable opportunity to be heard on the proposed development.

6.4 At such hearing the commissioner shall present in writing the following findings and supporting statements therefor:

(A) That the proposed development will not deprive users of the state park or recreational area of existing recreational facilities in any significant fashion;

(B) That the proposed development will not have substantial negative impact on the environmental, scenic or cultural qualities of the said park or area; and

(C) That the proposed development, considered as a whole, is of benefit to the recreational goals of the state and is consistent with the master plan developed for that park or recreational area.

6.5 Following a public hearing as prescribed herein any interested person may submit to the commissioner
written comments on the proposed development. All
comments made at a hearing, in addition to those
received in writing within thirty days after any such
hearing, shall be considered by the commissioner in the
determination of whether to approve the proposed
development.

6.6 The commissioner may not enter into any contract
of a duration of more than ten years unless all proce-
dures and requirements as prescribed by this section
have been complied with.

6.7 The commissioner shall make a decision whether
to approve any proposal to enter into a contract for a
duration of more than ten years within sixty days after
the conclusion of the hearing as specified herein."

§64-3-4. Division of energy.

(a) The legislative rules filed in the state register on
the thirty-first day of March, one thousand nine hundred
eighty-two, relating to the department of mines (energy)
(mine safety program), are authorized.

(b) The legislative rules filed in the state register on
the seventeenth day of August, one thousand nine
hundred eighty-three, relating to the department of
energy (governing the safety of those employed in and
around surface mines), are authorized.

(c) The legislative rules filed in the state register on
the seventh day of December, one thousand nine
hundred eighty-three, relating to the office of oil and
gas, department of mines (energy) (oil and gas and other
wells), are authorized with the amendments set forth
below:

Page viii, place an * in front of section 32.02.
Page ix, after section 35.04 add the following:
"*35.05 Extra Powers of the Administrator ......... 64."
Page 1, section 1.03 in the list of additional regula-
tions, add 35.05; in the list of revised regulations, add
32.02, 32.03 and 33.00.
Page 52, section 32.04 and section 32.05 add at the end
of (ii) the words "and (iii) definition of proration unit".
Page 53, section 33 after the word “definitions” add the following sentence: “The following definitions are applicable to these regulations used for purposes of implementing the Natural Gas Policy Act of 1978 and are not intended to be used in any other context.”

Page 55, section 33.02 (b)(16) after the word “formations” in the third lines of (i) and (ii), add the words “for which a well has been”.

Page 64, after section 35.04 add the following section:

“35.05 Extra Powers of the Administrator.

The administrator may also certify or provide a waiver for a well located within a proration unit as defined in 32.02 (b)(16) or any other well sought to be certified under these regulations after notice and hearing.”

(d) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (oil and gas wells and other wells), are authorized.

(e) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the oil and gas division of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (certification of gas wells), are authorized.

(f) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred
eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (underground injection control), are authorized.

(g) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (state national pollutant discharge elimination system (NPDES) program), are authorized.

(h) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (standards for certification of coal mine electricians), are authorized with the following amendments:

Page one, §2.1, subsection (a), following the second word, “electrician” by striking the colon and inserting the following: “under the supervision required by section 4.1(d) of these rules:”.

Page one, §2.1, subsection (a), by deleting all of subdivision (6) and renumbering the subsequent subdivisions.

Page two, §2.1, subsection (a), by deleting all of subdivision (9).

Page two, §2.1, subsection (b), by deleting all of
subdivision (14) and inserting in lieu thereof a new subdivision (14) to read as follows: "(14) Replace blown fuses on trolley poles and nips."

Page five, §4.1, subsection (d), line three, following the words "certified electrician prior" by inserting the words "to any work being performed and again prior".

(i) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (safety training program for prospective underground coal miners in West Virginia), are authorized.

(j) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (miscellaneous water pollution control), are authorized.

(k) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (dam control), are authorized.

(l) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of
The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (hazardous waste management), are authorized.

The legislative rules filed in the state register on the twentieth day of April, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (roof control), are authorized.

The legislative rules filed in the state register on the third day of April, one thousand nine hundred eighty-seven, relating to the department of energy (standards for certification of underground belt examiners for underground coal mines), are authorized.

The legislative rules filed in the state register on the ninth day of April, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (performance standards for blasting on surface mines), are authorized.

The legislative rules filed in the state register on the twelfth day of January, one thousand nine hundred eighty-seven, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (state national pollutant discharge elimination system (NPDES) for mines and minerals), are authorized.

The Legislature hereby authorizes and directs the department of energy to promulgate the procedural rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-seven,
relating to the department of energy (requests for information) with the amendments set forth below:

On page two, subsection 3.1, by striking subdivision (d) and renumbering the remaining subdivisions.

And,

On page three, section 6, by striking all of subsection 6.1 and inserting in lieu thereof, the following:

"6.1 The department shall establish fixed rate fees for reproduction of documents, records, and files on the basis of the actual cost of such reproduction and shall document such costs: Provided, That where total costs are less than five dollars, no fee shall be charged."

(s) The legislative rules filed in the state register on the twelfth day of May, one thousand nine hundred eighty-seven, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (blasters certification for surface coal mines and surface areas of coal mines), are authorized.

(t) The legislative rules filed in the state register on the twentieth day of January, one thousand nine hundred eighty-eight, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of November, one thousand nine hundred eighty-eight, relating to the commissioner of the department of energy (abandoned mine reclamation), are authorized.

(u) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-eight, and modified to meet the objections of the West Virginia Legislature and refiled in the state register on the sixth day of April, one thousand nine hundred eighty-nine, relating to the commissioner of the department of energy (West Virginia surface mining reclamation regulations (repealer)), are authorized.
(v) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-nine, modified by the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred ninety, relating to the department of energy (submission and approval of a comprehensive mine safety program for coal mining operations in the State of West Virginia), are authorized.

(w) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-nine, modified by the division of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, one thousand nine hundred ninety, relating to the division of energy (surface mining reclamation), are authorized with the amendments set forth below:

On page 64, section 3.25(a)(2), after the words “section 18 of the Act and paragraph” by deleting the “(c)” and inserting in lieu thereof the following: “(a), (b), (c), (d), (i), (j), and (k)”.

And,

On page 148, section 12.4(d)(2), by deleting the current language and inserting in lieu thereof the following:

“(2) In the event the Commissioner is unable to collect the costs from the permittee, the Commissioner shall in a timely manner but not later than one hundred eighty days after forfeiture of the site-specific bond utilize moneys in the Special Reclamation Fund created by Subsection (g), Section 11 of the Act, to accomplish the completion of reclamation, including the requirements of Section 23 of the Act and Subsection 14.5 of these regulations governing water quality.”

§64-3-5. Enterprise zone authority.

The legislative rules filed in the state register on the
twenty-sixth day of October, one thousand nine hundred eighty-eight, modified by the enterprise zone authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the enterprise zone authority (creation of enterprise zone authority to designate certain enterprise zones and provide for tax benefits within those zones), are authorized.

§64-3-6. West Virginia industrial and trade jobs development corporation.

The legislative rules filed in the state register on the fifteenth day of October, one thousand nine hundred eighty-six, modified by the West Virginia industrial and trade jobs development corporation to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of January, one thousand nine hundred eighty-seven, relating to the West Virginia industrial and trade jobs development corporation (general administration of the West Virginia capital company act and establishment of application procedures to implement the act), are authorized.

§64-3-7. Division of labor.

(a) The legislative rules filed in the state register on the tenth day of May, one thousand nine hundred eighty-two, relating to the commissioner of labor (steam boiler rules) as modified by the legislative rule-making review committee are authorized.

(b) The legislative rules filed in the state register on the seventh day of December, one thousand nine hundred eighty-three, relating to the department of labor (hazardous chemical substances), are authorized.

(c) The legislative rules filed in the state register on the second day of February, one thousand nine hundred eighty-four, relating to the department of labor (polygraph examinations), are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of December, one thousand nine
hundred eighty-seven, relating to the commissioner of
labor (West Virginia occupational safety and health act),
are authorized.

(e) The legislative rules filed in the state register on
the twenty-second day of December, one thousand nine
hundred eighty-seven, modified by the commissioner of
labor to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twentieth day of January, one thousand
nine hundred eighty-eight, relating to the commissioner
of labor (wage payment and collection act), are
authorized.

(f) The legislative rules filed in the state register on
the sixteenth day of November, one thousand nine
hundred eighty-seven, relating to the commissioner of
the department of labor (standards for weights and
measures inspectors—adoption of NBS Handbook 130,
1987), are authorized.

(g) The legislative rules filed in the state register on
the twelfth day of January, one thousand nine hundred
eighty-eight, relating to the commissioner of labor
(steam boiler inspection fee schedule), are authorized.

(h) The legislative rules filed in the state register on
the thirteenth day of September, one thousand nine
hundred eighty-eight, modified by the department of
labor to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the seventh day of December, one thousand
nine hundred eighty-eight, relating to the department of
labor (amusement rides and amusement attractions
safety act), are authorized.

(i) The legislative rules filed in the state register on
the sixteenth day of June, one thousand nine hundred
eighty-nine, modified by the department of labor to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the first
day of August, one thousand nine hundred eighty-nine,
relating to the department of labor (wage payment and
collection act), are authorized.
§64-3-8. Division of natural resources.

(a) The legislative rules filed in the state register on the eighth day of December, one thousand nine hundred eighty-three, relating to the department of natural resources (surface mining), are authorized with the amendments set forth below:

Page 3-4, §3E.01 by adding after the word “engineer” the words “or licensed land surveyor”.

Page 3-5, §3E.02, subsection (a), by adding after the word “mining” the words “or civil”.

Page 3-5, §3E.02, subsection (b), by adding after the first sentence — “Those persons who have been approved to date need not make said demonstration.”

(b) The legislative rules filed in the state register on the twentieth day of January, one thousand nine hundred eighty-four, relating to the department of natural resources (solid waste management), are authorized with the amendments set forth below:

Page 9, section 4.04, line five, add the following paragraph:

“Upon request of any applicant, the division shall meet with the applicant for prefiling review of the application. The division, with the cooperation of the solid waste authority, shall assist the applicant in preparing a complete and proper application which would not be rejected as incomplete.”

On page 15, section 6.03 (c)(1) in the first full sentence, after the word “cease”, strike the remainder of the sentence and insert in lieu thereof the words “within fifteen (15) days of receipt of an order of suspension” and in the second sentence strike the word “recommence” and insert the words “continue beyond fifteen (15) days”; (c)(2) in the first full sentence, after the word “cease” by striking out the remainder of the sentence and insert in lieu thereof the words “immediately upon receipt of an order of revocation.”

(c) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine
hundred eighty-four, relating to the department of
natural resources (public use of state parks, forests,
hunting and fishing areas), are authorized.

(d) The legislative rules filed in the state register on
the seventh day of November, one thousand nine
hundred eighty-four, relating to the department of
natural resources (surface mining reclamation), are
authorized.

(e) The legislative rules filed in the state register on
the seventh day of November, one thousand nine
hundred eighty-four, relating to the department of
natural resources (coal refuse disposal), are
authorized.

(f) The legislative rules filed in the state register on
the ninth day of November, one thousand nine hundred
eighty-four, relating to the department of natural
resources (transfer of the state national pollutant
discharge elimination system program), are authorized
with the amendments set forth below:

Page 10-5, by striking § 10B.19 and inserting in lieu
thereof a new § 10B.19, to read as follows: "'Effluent
limitations guidelines' means a regulation published by
the Administrator under Section 304(b) or Section
301(b)(1)(B) of the CWA to adopt or revise effluent
limitations or levels of effluent quality attainable
through the application of secondary or equivalent
treatment. For the coal industry these regulations are
published at 40 C.F.R. Parts 434 and 133. (See:
Appendix G and H)."

(g) The legislative rules filed in the state register on
the twenty-eighth day of August, one thousand nine
hundred eighty-four, relating to the department of
natural resources (small arms hunting), are authorized.

(h) The legislative rules filed in the state register on
the sixth day of January, one thousand nine hundred
eighty-four, relating to the department of natural
resources (hazardous waste management), are
authorized.

(i) The legislative rules filed in the state register on
the third day of December, one thousand nine hundred
eighty-four, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of February, one thousand nine hundred eighty-five, relating to the department of natural resources (hazardous waste management), are authorized.

(j) The legislative rules filed in the state register on the tenth day of October, one thousand nine hundred eighty-five, relating to the department of natural resources (hazardous waste management: small quantity generators and waste minimization certification), are authorized with the amendments set forth below:

On page 1, §3.1.4b, delete the word “or” in the reference to “paragraph (g) or (j)” and insert in lieu thereof the words “and, if applicable”.

(k) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred eighty-five, relating to the department of natural resources (WV/NPDES regulations for the coal mining point source category and related sewage facilities), are authorized.

(l) The legislative rules filed in the state register on the eleventh day of December, one thousand nine hundred eighty-five, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management), are authorized.

(m) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred eighty-six, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of December, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management regulations), are authorized.
(n) The legislative rules filed in the state register on
the seventh day of August, one thousand nine hundred
eighty-six, relating to the director of the department of
natural resources (procedures for transporting and
dealing in furbearing animals), are authorized.

(o) The legislative rules filed in the state register on
the thirtieth day of December, one thousand nine
hundred eighty-six, relating to the department of
natural resources (WV/NPDES program for coal mines
and preparation plants, and the refuse and waste
therefrom), are authorized with the amendments set
forth below:

On page four, § 1.9.1.a by inserting the words “five
thousand dollars or” after the words “‘significant
portion of income’ means”,

And,

On page four, § 1.9.1.a by inserting the words
“whichever is less,” after the words “ten percent or more
of gross personal income for a calendar year”.

(p) The legislative rules filed in the state register on
the fifth day of March, one thousand nine hundred
eighty-six, relating to the department of natural
resources (hazardous waste management), are
authorized.

(q) The legislative rules filed in the state register on
the twelfth day of August, one thousand nine hundred
eighty-seven, relating to the department of natural
resources (WV/NPDES regulations for coal mining
facilities), are authorized.

(r) The legislative rules filed in the state register on
the tenth day of June, one thousand nine hundred
eighty-seven, relating to the director of the department
of natural resources (outfitters and guides), are
authorized.

(s) The legislative rules filed in the state register on
the ninth day of January, one thousand nine hundred
eighty-seven, relating to the department of natural
resources (hazardous waste management regulations),
are authorized.
(t) The legislative rules filed in the state register on the fifth day of March, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations, series 35), are authorized.

(u) The legislative rules filed in the state register on the seventh day of December, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations, series 35), are authorized.

(v) The legislative rules filed in the state register on the sixteenth day of December, one thousand nine hundred eighty-seven, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-eight, relating to the department of natural resources (solid waste management), are authorized.

(w) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred eighty-seven, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of August, one thousand nine hundred eighty-seven, relating to the director of the department of natural resources (boating regulations), are authorized with the amendment set forth below:

On page 16, section 6.2, line 3 by inserting following the period "This regulation does not apply to licensed outfitters and guides." These rules were proposed by the director of the department of natural resources pursuant to section seven, article one and section twenty-two, article seven, chapter twenty of this code.

(x) The legislative rules filed in the state register on the second day of September, one thousand nine hundred eighty-eight, modified by the department of
natural resources to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the seventeenth day of October, one thousand
nine hundred eighty-eight, relating to the department of
natural resources (hazardous waste management), are
authorized.

(y) The legislative rules filed in the state register on
the thirty-first day of August, one thousand nine
hundred eighty-eight, relating to the director of the
department of natural resources (boating), are
authorized.

(z) The legislative rules filed in the state register on
the eighth day of March, one thousand nine hundred
eighty-eight, modified by the director of the department
of natural resources to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the thirtieth day of August, one
thousand nine hundred eighty-eight, relating to the
director of the department of natural resources (com­
mercial sale of wildlife), are authorized.

(aa) The legislative rules filed in the state register on
the twenty-seventh day of January, one thousand nine
hundred eighty-eight, relating to the director of the
department of natural resources (catching and selling
bait fish), are authorized.

(bb) The legislative rules filed in the state register on
the twenty-fifth day of March, one thousand nine
hundred eighty-eight, relating to the director of the
department of natural resources (West Virginia public
hunting and fishing areas), are authorized with the
following amendment:

On page three, section 3.8.4, by inserting after the
word "vehicle" the following: "all terrain vehicle
(ATV)".

(cc) The legislative rules filed in the state register on
the seventeenth day of March, one thousand nine
hundred eighty-nine, modified by the division of natural
resources to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the sixteenth day of January, one thousand
nine hundred ninety, relating to the division of natural
resources (solid waste management), are authorized
with the amendments set forth below:

On page 13, section 3.2.6, by deleting the current
language and inserting in lieu thereof the following:

"3.2.6. Within two hundred (200) feet of faults that
have had displacement in Holocene time (i.e., during
the last eleven thousand years);"

On page 64, section 3.14.25, by deleting the current
language and inserting in lieu thereof the following
language:

"3.14.25. Environmental Compliance History. The
chief or the director may refuse to grant any permit if
he has reasonable cause to believe, as indicated by
documented evidence, that the applicant, or any officer,
director or manager, thereof, or shareholder owning
twenty percent (20%) or more of its capital stock,
beneficial or otherwise, or other person conducting or
managing the affairs of the applicant or of the proposed
permitted premises, in whole or part, has exhibited a
pattern of violation of the environmental statutes or
regulations of this state, any other state, or the federal
government."

On page 104, section 4.5.4.a, by inserting after the
words "at that landfill" the following:

"Nothing within these regulations shall be construed
to allow the installations of any liner or system on areas
not lined as of November 30, 1989, that is not in
conformance with section 4.5.4.a.E or 4.5.4.a.G. of these
regulations. Landfills that do have an article 5f permit
and a liner installed as of November 30, 1989, may
install a liner as approved by the chief."

And,

On pages 147 through 151, sections 4.11.5 and 4.11.6,
by deleting the current language and inserting in lieu
thereof the following:

"4.11.5 Corrective Action Program."
Whenever a statistically significant increase is found in a Phase II or Phase III monitoring parameter, or when groundwater contamination is otherwise identified by the Chief at sites without monitoring programs, which is determined by the Chief to have resulted in a significant adverse effect on an aquifer, and which is attributable to a solid waste facility, the Chief may require appropriate corrective or remedial action pursuant to West Virginia Code Chapter 20, Article 5A, and Chapter 20, Article 5F to abate, remediate or correct such pollution. Any such corrective or remedial action order shall take into account any applicable groundwater quality protection standards, the existing use of such waters, the reasonable uses of such waters, background water quality, and the protection of human health and the environment."

(dd) The legislative rules filed in the state register on the seventeenth day of February, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (underground storage tanks), are authorized.

(ee) The legislative rules filed in the state register on the twenty-seventh day of January, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (transporting and selling wildlife pelts), are authorized.

(ff) The legislative rules filed in the state register on the seventeenth day of February, one thousand nine hundred eighty-nine, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of August, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (underground storage tank fee assessments), are authorized.

(gg) The legislative rules filed in the state register on the twenty-fourth day of April, one thousand nine hundred eighty-nine, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and
refiled in the state register on the twenty-second day of May, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (public hunting and fishing areas), are authorized.

(hh) The legislative rules filed in the state register on the first day of December, one thousand nine hundred eighty-nine, relating to the department of natural resources (water pollution control permit fee schedules), are authorized with the amendment set forth below:

On page five, section 3.3, by deleting the following:
"Submitted fees are not refundable."

On page two, after section 2.6, by inserting the following:
"'customer' means any person that purchases waste disposal services from a facility permitted under article five-a, chapter twenty, of the code of West Virginia, one thousand nine hundred thirty-one, as amended. For the purposes of these regulations, commercial and other non-single family dwelling customers shall be translated into customer equivalents by dividing the total daily estimated volume of waste water by three hundred and fifty gallons per day."

And, on page nine, section 7.2, by striking out the words "seven hundred fifty dollars ($750)." and inserting in lieu thereof the following:
"determined using Table D, but in no case shall be less than two hundred and fifty dollars ($250)."

And,

On page thirteen, by striking out all of Table D, Schedule of Annual Permit Fees, and inserting in lieu thereof a new Table D, designated "Schedule of Annual Permit Fees", to read as follows:

"TABLE D
SCHEDULE OF ANNUAL PERMIT FEES
SEWAGE FACILITIES

<table>
<thead>
<tr>
<th>Number of Customers</th>
<th>Annual Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 1000</td>
<td>$ 250</td>
</tr>
</tbody>
</table>
### Ch. 120] LEGISLATIVE RULES

<table>
<thead>
<tr>
<th>Example</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1000 to 1499</td>
<td>$500</td>
</tr>
<tr>
<td>1500 to 1999</td>
<td>$750</td>
</tr>
<tr>
<td>2000 to 2499</td>
<td>$1000</td>
</tr>
<tr>
<td>2500 to 2999</td>
<td>$1250</td>
</tr>
<tr>
<td>3000 to 3499</td>
<td>$1500</td>
</tr>
<tr>
<td>3500 to 3999</td>
<td>$1750</td>
</tr>
<tr>
<td>4000 to 4499</td>
<td>$2000</td>
</tr>
<tr>
<td>4500 to 4999</td>
<td>$2250</td>
</tr>
<tr>
<td>greater than 5000</td>
<td>$2500</td>
</tr>
</tbody>
</table>

### INDUSTRIAL OR OTHER WASTE FACILITIES

<table>
<thead>
<tr>
<th>Average Discharge Volume (gallons per day)</th>
<th>Annual Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 1,000</td>
<td>$50</td>
</tr>
<tr>
<td>1,001 to 10,000</td>
<td>$500</td>
</tr>
<tr>
<td>10,001 to 50,000</td>
<td>$1000</td>
</tr>
<tr>
<td>greater than 50,000</td>
<td>$2500</td>
</tr>
</tbody>
</table>

(ii) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-nine, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of September, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (revocation of hunting and fishing licenses), are authorized.

(jj) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-nine, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety, relating to the division of natural resources (state water pollution control revolving fund program), are authorized.


1 (a) The legislative rules filed in the state register on the thirtieth day of August, one thousand nine hundred
eighty-four, relating to the water development authority
(hardship grant funds), are authorized.

(b) The legislative rules filed in the state register on
the fourteenth day of August, one thousand nine
hundred eighty-six, relating to the water development
authority (requirements governing disbursements of
loans and grants to governmental agencies for the
acquisition or construction of water development
projects), are authorized.

§64-3-10. Water resources board.

(a) The legislative rules filed in the state register on
the sixth day of January, one thousand nine hundred
eighty-three, relating to the state water resources board
(underground injection control program), are
authorized.

(b) The legislative rules filed in the state register on
the fifteenth day of November, one thousand nine
hundred eighty-three, relating to the state water
resources board (special regulations), are authorized.

(c) The legislative rules filed in the state register on
the third day of August, one thousand nine hundred
eighty-three, relating to the state water resources board
(groundwater protection standards), are authorized.

(d) The legislative rules filed in the state register on
the fifteenth day of November, one thousand nine
hundred eighty-three, relating to the state water
resources board (state national pollutant discharge
elimination system (NPDES) program), are authorized.

(e) The Legislature hereby authorizes and directs the
state water resources board to promulgate rules relating
to water quality standards in exact conformity with the
rules relating to water quality standards tendered to the
secretary of state on the seventh day of March, one
thousand nine hundred eighty-four, by the executive
secretary of the state water resources board, to be
received and filed for inclusion in the state register by
the secretary of state.

(f) The legislative rules filed in the state register on
the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (special regulations), are authorized.

(g) The legislative rules filed in the state register on the seventh day of January, one thousand nine hundred eighty-five, modified by the water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of February, one thousand nine hundred eighty-five, relating to the water resources board (water quality standards), are authorized.

(h) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred eighty-seven, and further modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (water quality standards), are authorized.

(i) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred eighty-seven, and further modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (state national pollutant
discharge elimination system (NPDES) program), are authorized.

(j) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (underground injection control program), are authorized.

(k) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (special regulations), are authorized.

(l) The legislative rules filed in the state register on the thirtieth day of June, one thousand nine hundred eighty-seven, relating to the water resources board (water quality standards), are authorized.

(m) The legislative rules filed in the state register on the fourteenth day of October, one thousand nine hundred eighty-eight, relating to the water resources board (water quality standards), are authorized.

§64-3-11. Economic development authority.

The legislative rules filed in the state register on the twenty-sixth day of May, one thousand nine hundred eighty-nine, modified by the West Virginia economic development authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, one thousand nine hundred ninety, relating to the West Virginia economic development authority (general administration of the West Virginia capital company act and the establishment of the application procedures to implement the act), are authorized.
ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION AND THE ARTS TO PROMULGATE LEGISLATIVE RULES.

§64-4-1. Archives and history division.

§64-4-2. Library commission.

§64-4-1. Archives and history division.

1 (a) The legislative rules filed in the state register on
2 the fourteenth day of September, one thousand nine
3 hundred eighty-four, relating to the archives and history
4 commission (certified local government program) are
5 authorized with the following amendments:
6
7 §4.02, subsections a, b, c, d, e, g and i are amended
8 in their entirety to read as follows:
9
10 “a. The local government shall have created a historic
11 landmark commission or commission, consisting of five
12 (5) members, to carry out the provisions of the ordinance
13 or order.”
14
15 “b. HLC or commission membership shall be drawn
16 from among persons with demonstrated interest,
17 competence, or knowledge in historic preservation and
18 local history. To the extent available in the community,
19 members of the HLC shall be preservation-related
20 professionals (including the professions of history,
21 architecture, architectural history, planning, real estate,
22 American studies, geography, landscape architecture,
23 law, engineering, or archaeology). When a discipline is
24 not represented in the Commission membership, com-
25 missioners shall seek expertise in this area when
26 reporting on National Register nominations and other
27 actions that will impact properties which are normally
28 evaluated by a professional in such discipline. This may
29 be accomplished through consultation with universities
30 or colleges. Prior to the consultation process, the
31 Commission must notify the State Historic Preservation
32 Officer in writing that the appropriate professional
33 assistance has been obtained and identified.”
34
35 “c. The local government, be certified without the
36 minimum number or types of professional disciplines,
must report to the SHPO's satisfaction that it has made a reasonable effort to fill those positions. The requirements for professional representation on the Commission shall not exceed those of the State Review Board."

"d. Commission meetings shall be held at regular intervals at least four times each year, advertised in advance, and open to the public. The Commission shall establish rules of procedure or bylaws including a code of conduct."

"e. The Commission shall transmit an annual report of its activities to the State Historic Preservation Officer. Such reports shall include, at a minimum, new designations made, progress on survey activities, and attendance records. Reports shall be submitted within sixty days after the end of the fiscal year for the local government or portion of the fiscal year in the first year of the establishment of the commission. These reports will be reviewed and evaluated by the SHPO to ensure that the Commission's activities are consistent with the State Historic Preservation Plan."

"g. Records of proceedings shall be transmitted to the State Historic Preservation Officer at the same time they are transmitted to members of the Commission."

"i. Commission responsibilities must be complementary to and carried out in coordination with those of the State Historic Preservation Office as outlined in 36 CFR 61.4(b). The State Historic Preservation Office shall cooperate with the HLC or Commission by making available materials and training to provide a working knowledge of the roles and operations of federal, state and local preservation programs."

§5.01, subsections a and d are amended to read in their entirety as follows:

"a. A written assurance by the chief elected official that the local government does fulfill all the standards for certification outlined above."

"d. Resumes of each of the members of the historic landmark commission including credentials of member expertise in fields related to historic preservation.
Where no professional members have been appointed an explanation and information demonstrating good faith efforts to obtain such members shall be included.”

§5.03 is amended in its entirety to read as follows:

“5.03—Determination that Local Government Fulfills Requirements for Certification—If the State Historic Preservation Officer determines that the local government fulfills the requirements for certification, the State Historic Preservation Officer will prepare a written certification agreement with the local government that lists the specific responsibilities of the local government where certified. These responsibilities will include those powers and duties as stated in 4.02. The SHPO will notify the United States Secretary of the Interior, or designee and furnish a copy of the approved request and the certification agreement and shall respond to the local government within fifteen days of the Secretary’s response.”

The fourth line of §5.04 is amended to read as follows: “Secretary of the Interior within 15 working days. The certification”.

The last line of §6 is amended to read as follows: “(National Historic Preservation Act, Section 101(c)(2))”.

The section heading to §6.01 is amended in its entirety to read as follows: “6.01 Notification of Commission by SHPO of National Register Nomination of Property Within Local Government Jurisdiction—”

The last three lines of §6.01 are amended in their entirety to read as follows: “101(a) of the National Historic Preservation Act, as amended. The State may expedite such process with the concurrence of the certified local government.”

The first line after the section heading of §6.02 is amended to read as follows: “(National Historic Preservation Act, Sec. 101(c)(2)(b). If” and the third sentence of said §6.02 is amended in its entirety to read as follows: “If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to established procedures (section 101(a) of the Act).”
The second sentence of §6.03 is amended in its entirety to read as follows: "If an HLC or commission does not have a professional member with the necessary federal qualifications in the area, the HLC can obtain the opinion of a qualified professional in the area and consider their opinion in their recommendation."

§6.04 is amended in its entirety to read as follows:

"6.04—Commission Qualifications for Federal Pass Through Funds—Federal regulations also require that commissions possess certain qualifications in order to receive federal pass through funds. These are explained in Section 4.02."

§7.01 is amended in its entirety to read as follows:

"7.01—Performance Review of Certified Local Government by SHPO—The SHPO will review the commission's annual report to ensure that the performance of the local government is consistent with the State Historic Preservation Plan. If the SHPO determines that the performance of a certified local government is not in conformance with the certification agreement and the State Historic Preservation Plan the State Historic Preservation Officer shall document that determination and recommend to the certified local government steps which may be taken to improve their performance. The Historic Preservation Officer shall also review the administration of funds allocated from the Historic Preservation Fund and other documents as necessary. The SHPO shall maintain written records for all SHPO evaluation of CLG's so that they may be available to the Secretary at any time."

The last sentence of §7.03 is amended in its entirety to read as follows: "This closeout will follow procedures specified in National Register Programs Guidelines."

The first sentence of §8.01 is amended in its entirety to read as follows: "A minimum of 10% of the state's annual apportionment from the Historic Preservation Fund of the Department of the Interior will be set aside for transfer to qualified CLG's in accordance with the National Historic Preservation Act as amended. In any
The third line of the first sentence of §8.04 is amended in its entirety to read as follows: “consistent with 35CFR61.7(f)(1) which states that the amount awarded to”.

§8.05 is amended in its entirety to read as follows:

“8.05—Application and Selection Criteria—Project application forms and selection criteria will be made available through individual notification and public advertisement from the SHPO of the West Virginia Department of Culture and History in June of each year. The criteria will be coordinated with those used to select survey and planning grants during the fiscal year. Funds must be applied for by August 30 of each year. Funding in any prior year does not guarantee continued funding. The project schedule and deadlines may vary from year to year and is dependent upon the time frame in which the Secretary of the Interior notifies the state of its apportionment from the annual Historic Preservation Fund.”

The third sentence of §8.06 is amended in its entirety to read as follows: “The SHPO is responsible for proper accounting of Historic Preservation Fund grants to CLG’s in accordance with Office Management and Budget Circular A-102, Attachment P Audit Requirement.”

(b) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-eight, modified by the director of the division of archives and history of the department of culture and history to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of December, one thousand nine hundred eighty-eight, relating to the director of the division of archives and history of the department of culture and history (standards and
procedures for administering state historic preservation
programs), are authorized with the amendment set forth:

Section 3.2.b.A after the word “days” by inserting the
words “after receipt of actual notice”.

§64-4-2. Library commission.

The legislative rules filed in the state register on the
twenty-second day of October, one thousand nine
hundred eighty-five, modified by the West Virginia
library commission to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the twelfth day of November, one
thousand nine hundred eighty-five, relating to the West
Virginia library commission (designating a grace period
for the return of library materials), are authorized.

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH
AND HUMAN RESOURCES TO PROMULGATE
LEGISLATIVE RULES

§64-5-1. Department of health and human resources.
§64-5-2. State board of health; division of health.
§64-5-3. West Virginia health care cost review authority.
§64-5-4. West Virginia hospital finance authority.
§64-5-5. Division of human services; director of the child advocate office.

§64-5-1. Department of health and human resources.

(a) The legislative rules filed in the state register on
the twenty-second day of January, one thousand nine
hundred ninety, modified by the secretary of the
department of health and human resources to meet the
objections of the legislative rule-making review commit-
tee and refiled in the state register on the twenty-fifth
day of January, one thousand nine hundred ninety,
relating to the secretary of the department of health and
human resources (implementation of omnibus health
care act), are authorized.

(b) The legislative rules filed in the state register on
the twenty-second day of January, one thousand nine
hundred ninety, modified by the secretary of the
department of health and human resources to meet the
objections of the legislative rule-making review commit-
tee and refiled in the state register on the twenty-fifth
§64-5-2. State board of health; division of health.

(a) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (waste water treatment works operations), are authorized.

(b) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (laboratory reporting of syphilis and gonorrhea), are authorized.

(c) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (public water supply operators) with the modification of §11.02 as presented to the legislative rule-making review committee on the ninth day of November, one thousand nine hundred eighty-two, are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of October, one thousand nine hundred eighty-two, relating to the state board of health (sewage systems) with the modification presented to the legislative rule-making review committee on the sixth day of December, one thousand nine hundred eighty-two, are authorized except lines ten through seventeen, page eight of the rules shall be stricken in their entirety and the remaining paragraphs renumbered.

(e) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (approval of laboratories), are authorized.

(f) The legislative rules filed in the state register on the twenty-fourth day of November, one thousand nine hundred eighty-two, relating to the state board of health (permit fees), are authorized.
(g) The legislative rules filed in the state register on the third day of June, one thousand nine hundred eighty-two, relating to the state board of health (certificate of need), are authorized.

(h) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred eighty-two, relating to the state board of health (eyes of newborn children), are authorized.

(i) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, and filed with amendments on the eleventh day of January, one thousand nine hundred eighty-three, relating to the state board of health (nursing home licensure), are authorized with the amendment of §5.15.02 of those rules as set forth below:

By striking the word “and” at the end of subdivision (f), by changing the period at the end of subdivision (g) to a semicolon, and by adding the following after subdivision (g): “(h) one (1) member who represents social work services.”

(j) The legislative rules filed in the state register on the twenty-fourth day of November, one thousand nine hundred eighty-two, relating to the state board of health (guardianship service), are authorized with the exception of section 9.3 of those rules which may not be promulgated.

(k) The legislative rules filed in the state register on the third day of June, one thousand nine hundred eighty-two, relating to the state board of health (controlled substances research program and certification), are authorized.

(l) The legislative rules filed in the state register on the fifth day of November, one thousand nine hundred eighty-two, relating to the state board of health (chemical test for intoxication), are authorized.

(m) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (birthing center licensure), are authorized.
(n) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-three, relating to the state board of health (licensure of behavioral health centers), are authorized with the amendments set forth below:

Page 45, §12.8.2. In the first sentence delete the words "without delay" and insert in lieu thereof the words "within twenty-four hours after receiving a report of a complaint."

(o) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (procedures for recovery of corneal tissue for transplant), are authorized.

(p) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-three, relating to the state board of health (well water regulations), are authorized with the amendments set forth below:

§4.1. In the first sentence delete the word "obtaining" and insert in lieu thereof the words "applying for". In the second sentence after "4.3" add "and 4.5".

§4.2. At the end of the second sentence, strike the period and add the words "unless emergency conditions prevail as noted under §4.3."

With the balance of §4.2 and create a new §4.3 with the following changes: In the first sentence delete the word "deadline" and insert in lieu thereof the word "requirements". Add after the first sentence the sentence, "Emergency conditions and unavoidable circumstances are those conditions involving acts of God, water outages or disruption of water service, unsatisfactory water quality or quantity or public health threats."

In the third sentence delete the word "exceed" and insert in lieu thereof the words "be made in excess of".

Renumber §4.3 as §4.4 and add the following two sentences at the end of the section: "Such standards shall constitute the minimum standards for the installation, the alteration or the deepening of water wells. Any plans
approved by the director pursuant to these regulations
shall be in substantial compliance with the heretofore
mentioned standards."

Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7
as §4.8 and §4.8 as §4.9.

§5.2. Delete the words “four (4)” and insert in lieu
thereof the words “two (2)” and delete the words “active,
continuous”.

(q) The legislative rules filed in the state register on
the third day of October, one thousand nine hundred
eighty-four, relating to the state board of health (trauma
center or facility designation), are authorized.

(r) The legislative rules filed in the state register on
the twenty-first day of December, one thousand nine
hundred eighty-four, relating to the state board of
health (reportable diseases), are authorized.

(s) The legislative rules filed in the state register on
the twenty-first day of December, one thousand nine
hundred eighty-four, relating to the state board of
health (licensure of medical adult day care centers), are
authorized.

(t) The legislative rules filed in the state register on
the third day of October, one thousand nine hundred
eighty-four, relating to the state board of health (retail
food store sanitation), are authorized.

(u) The legislative rules filed in the state register on
the seventeenth day of December, one thousand nine
hundred eighty-five, modified by the director of health
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
fifteenth day of January, one thousand nine hundred
eighty-six, relating to the director of health (adult group
home licensure), are authorized.

(v) The legislative rules filed in the state register on
the twenty-ninth day of October, one thousand nine
hundred eighty-five, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
On page 3, §3.9 shall read as follows:

"3.9 Quorum—When applied to the EMSAC, a majority of the members thereof, except in the instance when at any meeting of the EMSAC, where a quorum is not present and the director causes to be deposited in the United States mail, postage prepaid, return receipt requested, to each member of the EMSAC within three days, a notice calling a meeting of the EMSAC at some convenient place in the state of West Virginia two weeks after the meeting at which no quorum was present. Quorum means any number of members of the EMSAC who attend such subsequent meeting. Any member missing two consecutive meetings shall be removed from the EMSAC."

On page 6, §4.7.1 shall be deleted in its entirety;

And,

On page 7, §4.10.1 shall read as follows:

"4.10.1 Every applicant for certification as an EMSP prior to such certification, shall demonstrate his or her knowledge and ability by undergoing a written examination and a demonstration of skills, and by attaining a passing score on the same. Passing score shall be the same for all testing programs."

(x) The legislative rules filed in the state register on the fifth day of September, one thousand nine hundred
eighty-five, relating to the state department of health
(revising the list of hazardous substances), are
authorized.

(y) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
eighty-six, modified by the director of the department
of health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the sixteenth day of October, one thousand
nine hundred eighty-six, relating to the director of the
department of health (hazardous material treatment
information repository), are authorized.

(z) The legislative rules filed in the state register on
the seventeenth day of July, one thousand nine hundred
eighty-six, modified by the state board of health to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
sixteenth day of October, one thousand nine hundred
eighty-six, relating to the state board of health (methods
and standards for chemical tests for intoxication), are
authorized.

(aa) The legislative rules filed in the state register on
the twenty-first day of November, one thousand nine
hundred eighty-six, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-third day of December, one
thousand nine hundred eighty-six, relating to the state
board of health (licensure of behavioral health centers),
are authorized.

(bb) The legislative rules filed in the state register on
the eighteenth day of April, one thousand nine hundred
eighty-six, modified by the state board of health to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
seventeenth day of October, one thousand nine hundred
eighty-six, relating to the state board of health (hospital
licensure), are authorized.

(cc) The legislative rules filed in the state register on
the ninth day of December, one thousand nine hundred
eighty-six, modified by the state board of health to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-third day of December, one thousand nine
hundred eighty-six, relating to the state board of health
(hospital licensure and allowing hospitals to have
licensed hospital professionals, other than licensed
physicians, on their medical staff), are authorized.

(dd) The legislative rules filed in the state register on
the ninth day of December, one thousand nine hundred
eighty-six, modified by the state board of health to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-third day of December, one thousand nine
hundred eighty-six, relating to the state board of health
(vital statistics), are authorized.

(ee) The legislative rules filed in the state register on
the eleventh day of September, one thousand nine
hundred eighty-seven, relating to the director of the
department of health (immunization criteria for
transfer students), are authorized.

(ff) The legislative rules filed in the state register on
the sixteenth day of November, one thousand nine
hundred eighty-seven, relating to the director of the
department of health (hazardous substances), are
authorized with the amendment set forth below:

Page 33, section 8, line 8 (unnumbered), by adding at
the end of section 8 the following proviso: "Provided,
that the owner's or operator's submissions are based on
the threshold reporting requirements contained in
section 5, article 31, chapter 16."

(gg) The legislative rules filed in the state register on
the eighteenth day of November, one thousand nine
hundred eighty-seven, relating to the director of the
department of health (trauma center or facility desig-
nation), are authorized.

(hh) The legislative rules filed in the state register on
the twenty-second day of June, one thousand nine
hundred eighty-eight, modified by the state board of
health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of September, one thousand nine hundred eighty-eight, relating to the state board of health (licensure of hospice care programs), are authorized.

(ii) The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred eighty-eight, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of November, one thousand nine hundred eighty-eight, relating to the state board of health (water wells) are authorized with the amendment set forth below:

On page 2, §3.8, shall read as follows:

"3.8 Water Well—Any excavation or penetration in the ground, whether drilled, bored, cored, driven or jetted that enters or passes through an aquifer for purposes that may include, but are not limited to: A water supply, exploration for water, dewatering or heat pump wells, except that this definition shall not include groundwater monitoring activities and all activities for the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources which are regulated under chapter 22, 22A or 22B of the code."

(jj) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred eighty-eight, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of September, one thousand nine hundred eighty-eight, relating to the state board of health (plumbing requirements), are authorized.

(kk) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred eighty-eight, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state
register on the fifteenth day of September, one thousand
nine hundred eighty-eight, relating to the state board of
health (public water supply operators), are authorized.

(II) The legislative rules filed in the state register on
the nineteenth day of October, one thousand nine
hundred eighty-eight, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twentieth day of December, one thousand
nine hundred eighty-eight, relating to the state board of
health (volatile synthetic organic chemicals), are
authorized.

(mm) The legislative rules filed in the state register
on the second day of January, one thousand nine
hundred ninety, modified by the division of health to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
seventeenth day of January, one thousand nine hundred
ninety, relating to the division of health (asbestos
abatement licensing), are authorized.

(nn) The legislative rules filed in the state register on
the thirtieth day of August, one thousand nine hundred
eighty-nine, modified by the division of health to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
seventeenth day of November, one thousand nine
hundred eighty-nine, relating to the division of public
health (AIDS-related medical testing and confidential-
ity), are authorized.

(oo) The legislative rules filed in the state register on
the nineteenth day of December, one thousand nine
hundred eighty-nine, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-fourth day of January, one
thousand nine hundred ninety, relating to the state
board of health (nursing home licensure), are
authorized.

(pp) The legislative rules filed in the state register on
the nineteenth day of December, one thousand nine
hundred eighty-nine, relating to the state board of health (licensure of behavioral health centers), are authorized.

(qq) The legislative rules filed in the state register on the twenty-eighth day of December, one thousand nine hundred eighty-nine, relating to the state board of health (methods and standards for chemical test for intoxication), are authorized.

§64-5-3. West Virginia health care cost review authority.

(a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the health care cost review authority (limitation on hospital gross patient revenue), are authorized.

(b) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the health care cost review authority (freeze on hospital rates and granting temporary rate increases), are authorized.

(c) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the health care cost review authority (implementation of the utilization review and quality assurance program), are authorized.

(d) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred eighty-four, relating to the health care cost review authority (hospital cost containment methodology), are authorized.

(e) The legislative rules filed in the state register on the twenty-fifth day of November, one thousand nine hundred eighty-five, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia health care cost review authority (interim standards for lithotripsy services), are authorized.
(f) The legislative rules filed in the state register on the third day of September, one thousand nine hundred eighty-seven, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of January, one thousand nine hundred eighty-eight, relating to the West Virginia health care cost review authority (exemptions from certificate of need review), are authorized.

(g) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-eight, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of February, one thousand nine hundred eighty-nine, relating to the health care cost review authority (financial disclosure), are authorized.

(h) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-nine, relating to the West Virginia health care cost review authority (expedited review for rate changes), are authorized with the amendments set forth below:

On page 5, Section 4.1, after the words: “affected by the increase.” by inserting the following language: “The hospital shall also reconcile any excesses in gross revenue, gross patient revenue, gross inpatient revenue or charges per discharge. Within fifteen days of submission the Authority shall inform the hospital if it accepts the justification for excesses provided by the hospital.”

And,

On page 6, section 4.2, after the words “the excess in gross outpatient revenue” by striking the period and inserting the following:
"or if any excesses in the above categories (1 through 4) have been sufficiently justified to the Authority as required in Section 4.1 of this rule."

(i) The legislative rules filed in the state register on the eleventh day of September, one thousand nine hundred eighty-nine, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-nine, relating to the West Virginia health care cost review authority (exemption for conversion of acute care beds to skilled nursing care beds), are authorized.

§64-5-4. West Virginia hospital finance authority.

The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-six, modified by the West Virginia hospital finance authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-seven, relating to the West Virginia hospital finance authority (establishment of fee schedule and cost allocation applicable to issuance of bonds), are authorized.

§64-5-5. Division of human services; director of the child advocate office.

(a) The Legislature hereby authorizes and directs the director of the child advocate office of the department of human services to promulgate rules relating to guidelines for child support awards in exact conformity with the rules relating to guidelines for child support awards tendered to the secretary of state by the Senate committee on the judiciary on the twelfth day of March, one thousand nine hundred eighty-eight.

(b) The legislative rules filed in the state register on the twenty-seventh day of May, one thousand nine hundred eighty-eight, modified by the director of the child advocate office of the department of human services to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-third day of September, one
thousand nine hundred eighty-eight, relating to the
director of the child advocate office of the department
of human services (interstate income withholding), are
authorized.

(c) The legislative rules filed in the state register on
the twenty-seventh day of May, one thousand nine
hundred eighty-eight, modified by the director of the
child advocate office of the department of human
services to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-third day of September, one
thousand nine hundred eighty-eight, relating to the
director of the child advocate office of the department
of human services (obtaining support from federal and
state income tax refunds), are authorized.

(d) The legislative rules filed in the state register on
the twenty-seventh day of May, one thousand nine
hundred eighty-eight, modified by the director of the
child advocate office of the department of human
services to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-third day of September, one
thousand nine hundred eighty-eight, relating to the
director of the child advocate office of the department
of human services (termination of income withholding),
are authorized.

(e) The legislative rules filed in the state register on
the twenty-seventh day of May, one thousand nine
hundred eighty-eight, modified by the director of the
child advocate office of the department of human
services to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-third day of September, one
thousand nine hundred eighty-eight, relating to the
director of the child advocate office of the department
of human services (providing information to credit
reporting agencies), are authorized.

(a) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-three, relating to the workers' compensation commissioner (employers' excess liability fund), are authorized.

(b) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, relating to the workers' compensation commissioner (time limits for the administrative proceedings of adjudications and awards), are authorized.

(c) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, modified by the workers' compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the workers' compensation commissioner (self-insured employers), are authorized.

(d) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, modified by the workers' compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-four, relating to the workers' compensation commissioner (payment of attorney's fees), are authorized.

(e) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred eighty-five, relating to the workers' compensation commissioner (standards for medical examination in occupational pneumoconiosis claims), are authorized with the amendments set forth below:

On page 1, the second and third unnumbered paragraphs on page one are amended to read as follows:

"When two or more ventilatory function tests performed in reasonably close proximity in time produce
differing but acceptable results, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional evidence and/or order additional testing at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the results are unreliable or incorrect or are clearly attributable to some identifiable disease or illness other than occupational pneumoconiosis.

When blood gas studies are performed and abnormal values are obtained and thereafter new blood gas studies are performed and normal or significantly higher values are further obtained, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional evidence and/or order additional studies at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the values are unreliable or incorrect or are clearly attributable to some identifiable disease or illness other than occupational pneumoconiosis."

And,

On page 7, paragraph (11) is amended to read as follows:

“(11) It is recognized that arterial blood gas studies done in laboratories throughout this state are obtained at different altitudes. Only by ‘standardizing’ for altitude can an equitable assessment be made of impairment when values of arterial oxygen are being measured at remarkably different altitudes. Therefore, the results reported from laboratories should include the name of the laboratory and the date and time of the testing, altitude of the laboratory and barometric pressure at the laboratory on the day the samples were collected. The O. P. Board will evaluate the arterial blood gas values by converting those values to the average altitude of Charleston, West Virginia. For this purpose, it shall be sufficient to add 1 mmHg to each arterial oxygen tension for each 300 feet or fraction thereof that the testing laboratory is located above the average altitude of Charleston, because the relationship of barometric pressure (altitude) and alveolar oxygen is
As an example, Bluefield is located approximately 2,600 feet above sea level. Charleston is approximately 600 feet above sea level. Thus, arterial oxygen values obtained in Bluefield should have 6.67 mmHg added to them before applying the table to them to obtain ‘percent impairment’. The calculations are as follows:

\[
\text{Bluefield (2,600')} - \text{Charleston (600')} = 2,000' \\
2,000' \div 300' \text{ altitude equals } 6.67 \\
6.67 \times 1 \text{ mmHg per 300' altitude equals 6.67 mmHg.}\
\]

(f) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred eighty-five, modified by the workers' compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred eighty-six, relating to the workers' compensation commissioner (administration of the coal-workers' pneumoconiosis fund), are authorized.

(g) The legislative rules filed in the state register on the thirtieth day of November, one thousand nine hundred eighty-nine, modified by the division of workers' compensation to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety, relating to the division of workers' compensation (enforcement of reporting and payment requirements), are authorized.

(h) The legislative rules filed in the state register on the sixteenth day of January, one thousand nine hundred ninety, modified by the division of workers' compensation to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of January, one thousand nine hundred
ninety, relating to the division of workers' compensation
(self-insured employers), are authorized.

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF PUBLIC
SAFETY TO PROMULGATE LEGISLATIVE
RULES.

§64-6-1. Division of corrections.
§64-6-2. Fire commission.
§64-6-3. Jail and prison standards commission.
§64-6-4. Division of public safety.

§64-6-1. Division of corrections.

(a) The legislative rules filed in the state register on
the twentieth day of September, one thousand nine
hundred eighty-eight, modified by the commissioner of
the department of corrections to meet the objections of
the legislative rule-making review committee and
refiled in the state register on the thirteenth day of
January, one thousand nine hundred eighty-nine,
relating to the commissioner of the department of
corrections (parole supervision), are authorized.

(b) The legislative rules filed in the state register on
the twentieth day of September, one thousand nine
hundred eighty-eight, modified by the commissioner of
the department of corrections to meet the objections of
the legislative rule-making review committee and
refiled in the state register on the thirteenth day of
January, one thousand nine hundred eighty-nine,
relating to the commissioner of the department of
corrections (furlough programs for inmates under the
custody and control of the commissioner of the depart-
ment of corrections), are authorized.

§64-6-2. Fire commission.

(a) The legislative rules filed in the state register on
the third day of January, one thousand nine hundred
eighty-four, relating to the state fire commission (state
fire code), are authorized with the amendments set forth
below:

On page 1, section 106, line 1, after the word "to" add
the words "personal care homes caring for five or less
patients or";
(b) The legislative rules filed in the state register on the first day of August, one thousand nine hundred eighty-six, modified by the state fire commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine hundred eighty-six, relating to the state fire commission (hazardous substance emergency response training program), are authorized.

(c) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-eight, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the state fire commission (state building code), are authorized.

(d) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred ninety, relating to the state fire commission (electrician licensing), are authorized with the following amendment:

On page 6, section 3.03, by deleting all of subsection (A) and inserting in lieu thereof the following:

“(A) Any person who performs electrical work with respect to any property owned or leased by such person. For purposes of this subparagraph: (1) ‘property owner’ includes the property owner, lessee, and his or her maintenance personnel; and, (2) ‘performs electrical work’ includes routine maintenance, repairs, and improvements to existing structures; or”.

And,

On page 26, section 11.06 (3) A. (3), strike the period at the end of the sentence and add the words “except for existing sleeping rooms owned by the state and located in dormitories or state parks.”
(e) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-nine, relating to the state fire commission (fees for services rendered), are authorized with the amendment set forth below:

On page 1, section 2.1(G), by striking out the word "underground".

(f) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of October, one thousand nine hundred eighty-nine, relating to the state fire commission (fire code), are authorized.

§64-6-3. Jail and prison standards commission.

(a) The legislative rules filed in the state register on the fifth day of November, one thousand nine hundred eighty-seven, relating to the jail and prison standards commission (West Virginia minimum standards for construction, operation and maintenance of jails), are authorized.

(b) The legislative rules filed in the state register on the ninth day of May, one thousand nine hundred eighty-eight, modified by the jail and prison standards commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of February, one thousand nine hundred eighty-nine, relating to the jail and prison standards commission (West Virginia minimum standards for construction, operation and maintenance of holding facilities), are authorized.

(c) The legislative rules filed in the state register on the eighteenth day of March, one thousand nine hundred
eighty-eight, modified by the jail and prison standards commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of February, one thousand nine hundred eighty-nine, relating to the jail and prison standards commission (West Virginia minimum standards for construction, operation and maintenance of prisons), are authorized.

(d) The Legislature hereby authorizes and directs the jail and prison standards commission to amend its rules relating to West Virginia minimum standards for construction, operation and maintenance of jails which were filed in the code of state regulations (95 CSR 1) on the fifth day of April, one thousand nine hundred eighty-eight, with the following amendment set forth below:

On page 7, §8.10 by striking out in the first sentence, after the word "house", the following words: "no less than four (4)" and

On page 30 by adding a new section 17.21 to read as follows:

"17.21 Visitation to Home County. To the extent that the previous subsections provide requirements for visitation with inmates housed in regional jail facilities, it is the intent that such requirements apply only to visitation provided in a regional jail facility. When visitation with family and friends is required to be provided to a person incarcerated in a regional jail facility in a location other than the regional jail, the following provisions shall apply:

17.21.1 The regional jail need not assume the responsibility for transportation to the home county seat of a person incarcerated in the regional jail facility for visitation with their family and friends unless that person has had no visits from family and friends in the previous three months.

17.21.2 In providing any transportation under subsection 17.21.1 the regional jail has the right to schedule such transportation for visits with family and friends of
the person incarcerated in a manner which would utilize
to the utmost the regional jail's regularly scheduled
trips to each of the respective counties it serves,
including the scheduling of round-trips, so long as a
minimum of 30 minutes is available for visitation.

17.21.3 The regional jail need not assume any respon-
sibility for transportation under subsection 17.21.1 when
the distance from the regional jail to the respective
county seat is less than two hours driving time.”

§64-6-4. Division of public safety.
(a) The legislative rules filed in the state register on
the twenty-third day of September, one thousand nine
hundred eighty-three, relating to the department of
public safety (general orders), are authorized with the
amendment set forth below:

Page 23, §9.10, remove the period at the end of the
sentence and add the words “or municipalities.”

(b) The legislative rules filed in the state register on
the twenty-second day of June, one thousand nine
hundred eighty-four, modified by the department of
public safety to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the fifth day of December, one thousand nine
hundred eighty-four, relating to the department of
public safety (commission on drunk driving), are
authorized.

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND
REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Office of alcohol beverage control commission.
§64-7-2. Agency of insurance commissioner.
§64-7-3. Board of investments.
§64-7-4. Lottery commission.
§64-7-5. Racing commission.
§64-7-6. Tax department.

§64-7-1. Office of alcohol beverage control commission.
(a) The legislative rules filed in the state register on
the thirtieth day of December, one thousand nine
hundred eighty-two, relating to the alcohol beverage
control commission (transportation of alcoholic beverages), are authorized.

(b) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to the alcohol beverage control commissioner (lighting of licensed premises), are authorized.

(c) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to the alcohol beverage control commissioner (kitchen and dining facilities), are authorized.

(d) The legislative rules filed in the state register on the twenty-fourth day of August, one thousand nine hundred eighty-two, relating to the alcohol beverage control commissioner (refusal to license private clubs), are authorized with the exception of subsection (a) of the rules which shall be promulgated as set forth below in this section as follows:

"(a) For purposes of this regulation, the commissioner may refuse to grant any license if he has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager thereof, or shareholder owning twenty percent or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or part:

(1) Is not a person of good moral character or repute;

(2) Has maintained a noisy, loud, disorderly or unsanitary establishment;

(3) Has demonstrated, either by his police record or by his record as former licensee under chapter sixty or chapter eleven, article sixteen of the West Virginia code, a lack of respect for law and order, generally, or for the laws and rules governing the sale and distribution of alcoholic beverages or nonintoxicating beer;

(4) Has the general reputation of drinking alcoholic
b) For purposes of this regulation, the commissioner shall refuse to grant any license if he has reasonable cause to believe, as indicated by documented evidence that the applicant, or any officer, director or manager thereof, or shareholder owning twenty percent or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or part:

(1) Is not eighteen years of age or older;

(2) Has been convicted of a felony or other crime involving moral turpitude, and, upon such conviction, the applicant shall not be eligible for licensure within five years next preceding successful completion of all conditions of probation, discharge from parole supervision or expiration of sentence;

(3) Has been convicted of violating the liquor laws of any state or the United States, and, upon such conviction, the applicant shall not be eligible for licensure within five years next preceding successful completion of all conditions of probation, discharge from parole supervision or expiration of sentence;

(4) Has had any license revoked under the liquor laws of any state or the United States within five years next preceding the filing date of the application;

(5) Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed;

(6) Is a person to whom alcoholic beverages may not be sold under the provisions of chapter sixty of the West Virginia code;

(7) Has been adjudicated an incompetent;

(8) Is an officer or employee of the alcohol beverage control commissioner of West Virginia; or
(9) Is violating or allowing the violation of any provision of chapter sixty, chapter sixty-one or chapter eleven, article sixteen of the code in its establishment at the time its application for a license is pending."

§64-7-2. Agency of insurance commissioner.

(a) The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-three, relating to the insurance commissioner (excess line brokers), are authorized.

(b) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of December, one thousand nine hundred eighty-six, relating to the insurance commissioner (examiners’ compensation, qualification and classification), are authorized.

(c) The legislative rules filed in the state register on the twentieth day of February, one thousand nine hundred eighty-seven, relating to the insurance commissioner (West Virginia essential property insurance association), are authorized.

(d) The legislative rules filed in the state register on the twenty-ninth day of May, one thousand nine hundred eighty-seven, relating to the insurance commissioner (medical malpractice annual reporting requirements), are authorized.

(e) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred eighty-seven, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of November, one thousand nine hundred eighty-seven, relating to the insurance commissioner (medical malpractice loss experience and loss expense reporting requirements), are authorized.
(f) The legislative rules filed in the state register on the thirtieth day of November, one thousand nine hundred eighty-eight, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of February, one thousand nine hundred eighty-nine, relating to the insurance commissioner (transitional requirements for the conversion of medicare supplement insurance benefits and premiums to conform to medicare program revisions), are authorized.

(g) The legislative rules filed in the state register on the twenty-sixth day of May, one thousand nine hundred eighty-nine, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-nine, relating to the insurance commissioner (insurance adjusters), are authorized.

§64-7-3. Board of investments.

(a) The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state board of investments (selection of state depositories for disbursement accounts through competitive bidding), are authorized.

(b) The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state board of investments (administration of the consolidated fund), are authorized.

(c) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred ninety, modified by the state board of investments to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety, relating to the state board of investments (administration of the consolidated fund), are authorized.
(d) The legislative rules filed in the state register on
the ninth day of January, one thousand nine hundred
ninety, modified by the state board of investments to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-fourth day of January, one thousand nine
hundred ninety, relating to the state board of invest-
ments (administration of the consolidated pension fund),
are authorized.

§64-7-4. Lottery commission.

The legislative rules filed in the state register on the
twenty-first day of April, one thousand nine hundred
eighty-seven, modified by the state lottery commission
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
fourteenth day of August, one thousand nine hundred
eighty-seven, relating to the state lottery commission
(state lottery), are authorized.

§64-7-5. Racing commission.

(a) The legislative rules filed in the state register on
the twenty-third day of April, one thousand nine
hundred eighty-two, relating to the West Virginia
racing commission (Rule 795), are authorized.

(b) The legislative rules filed in the state register on
the twenty-third day of April, one thousand nine
hundred eighty-two, relating to the West Virginia
racing commission (Rule 819), are authorized.

(c) The legislative rules filed in the state register on
the twenty-third day of April, one thousand nine
hundred eighty-two, relating to the West Virginia
racing commission (Rule 107), are authorized.

(d) The legislative rules filed with the legislative rule-
making review committee on the tenth day of January,
one thousand nine hundred eighty-three, relating to the
West Virginia racing commission (Rule 471), are
authorized.

(e) The legislative rules filed in the state register on
the tenth day of January, one thousand nine hundred
Ch. 120] LEGISLATIVE RULES 991

eighty-three, relating to the West Virginia racing commission (Rule 526), are authorized.

(f) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 107) greyhound racing, are authorized.

(g) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 108) greyhound racing, are authorized with the amendment set forth below:

Following the word “Association” insert a period and strike the remainder of the sentence.

(h) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 108) thoroughbred racing, are authorized with the amendment set forth below:

Following the word “Association” insert a period and strike the remainder of the sentence.

(i) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 392) greyhound racing, are authorized.

(j) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 455) greyhound racing, are authorized.

(k) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 609A) greyhound racing, are authorized.

(l) The legislative rules filed in the state register on the twentieth day of September, one thousand nine
hundred eighty-three, relating to the West Virginia racing commission (Rule 627) greyhound racing, are authorized.

(m) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 845) thoroughbred racing, are authorized.

(n) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 628), are authorized.

(o) The legislative rules filed in the state register on the twenty-fifth day of September, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 672), are authorized.

(p) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (thoroughbred racing — Rule 808), are authorized.

(q) The legislative rules filed in the state register on the twenty-fifth day of September, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (thoroughbred racing—Rule 843), are authorized.

(r) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 845-I), are authorized.

(s) The legislative rules filed in the state register on the third day of September, one thousand nine hundred eighty-seven, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of December, one
thousand nine hundred eighty-seven, relating to the West Virginia racing commission (greyhound racing), are authorized.

(t) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred eighty-seven, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of December, one thousand nine hundred eighty-seven, relating to the West Virginia racing commission (thoroughbred racing), are authorized with the amendments set forth below:

On page fifty-five, Section 61.3(f), by striking all of subsection (f) and inserting in lieu thereof the existing provisions of subsection (f) as contained in 178 CSR 1, which reads as follows:

All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety (90) days after the close of the horse race meeting in connection with which the tickets were issued, shall be turned over by the licensee to the Racing Commission within fifteen (15) days after the expiration of such ninety (90) day period and the licensee shall give such information as the Racing Commission may require concerning such outstanding and unredeemed tickets; viz. The outs ledger enumerating all outstanding tickets at the close of each meeting, to contain a record of all tickets redeemed in the ninety (90) day following period, together with all redeemed tickets which shall bear the stamp of the cashier(s) making redemption: A stamp indicating “Outs Ticket”. In addition, a statement to accompany said ledger and tickets, setting forth the quantity and amount of each denomination redeemed in the ninety (90) day period, with a grand total indicating the sum paid in “Outs”. This sum subtracted from the outs on the closing day to equal the remittance of the Association in settlement of the “Out” account for the meeting.

(u) The legislative rules filed in the state register on
the ninth day of September, one thousand nine hundred eighty-eight, relating to the West Virginia racing commission (thoroughbred racing), are authorized.

(v) The legislative rules filed in the state register on the eighteenth day of January, one thousand nine hundred eighty-nine, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred eighty-nine, relating to the West Virginia racing commission (greyhound racing), are authorized.

(w) The legislative rules filed in the state register on the fourth day of March, one thousand nine hundred eighty-nine, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of June, one thousand nine hundred eighty-nine, relating to the West Virginia racing commission (thoroughbred racing), are authorized.

(x) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred eighty-nine, relating to the West Virginia racing commission (greyhound racing), are authorized.

§64-7-6. Tax department.

(a) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the state tax commissioner (appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes), are authorized with the amendments set forth below:

On page 8, section 11.04 (b)(2), definition of “Active Mining Property,” at the end of the first paragraph following the “period,” by adding the following: “In the application of the herein provided valuation formula on ‘active mining property,’ the appropriate formula calculation will be based upon the actual market to which the coal from that tract and seam is currently being sold, whether it is ‘metallurgical’ or ‘steam.’”
On page 9, section 11.04 (b)(3), definition of "Active Reserves," at the end of the subsection, following the "period," by adding the following: "In the application of the herein provided valuation formula on 'active reserves,' the appropriate formula calculation will be based upon the actual market to which the coal from that tract and seam is currently being sold, whether it is 'metallurgical' or 'steam'."

On page 11, section 11.04 (b)(11), definition of "Mineable Coal," by striking the subsection and substituting in lieu thereof the following: "(11) Mineable Coal. Coal which can be mined under present day mining technology and economics."

On page 25, section 11.04 (c)(2)(C), entitled "Property Tax Component," by striking the subsection and inserting in lieu thereof the following: "(C) Property Tax Component—This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property."

On page 30, section 11.04 (c)(4), entitled "Valuation of Mined-Out/Unmineable/Barren Coal Properties," by striking the numbers "$5.00" and inserting in lieu thereof the following: "$1.00".

On page 31, section 11.04 (c)(5)(B), by striking the words and numbers "Five Dollars ($5.00)" and inserting in lieu thereof the following: "One Dollar ($1.00)".

On page 53, section 11.05 (h) by striking the symbol and figures "($5.00)" and inserting in lieu the following: "($1.00)".

On page 73, section 11.06 (h) by striking the symbol and figures "$5.00" and inserting in lieu the following: "$1.00".

On page 81, section 11.07 (e)(15)(B)(4) at the end of the second sentence remove the period after the word "property" and insert the words "unless the land is used for some other purpose in which case it will be taxed according to its actual use."
On page 86, section 11.07 (k) delete all of subsection (k).

On page 110, section 11.08 (c)(4) by striking the symbol and figures "$5.00" and inserting in lieu thereof the following: "$1.00".

On page 111, section 11.08 (c)(5)(B) by striking the symbol and figures "$5.00" and inserting in lieu thereof the following: "$1.00".

On page 115, section 11.09 (a)(3) in the first sentence, insert after the word "land" the words "excluding farm-
land."

(b) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four, relating to the state tax commis-
sioner (estimated personal income tax), are authorized with the amendments set forth below:

55.02(a)(2)(on page 182.2) line 18, after the word "profession" strike the words "on his own account" and the comma(,).

55.12(b)(1)(page 182.35) at the end of the section, change the period to a comma, and add the following language: "and in the case of a court appointed agent, a copy of the court order of appointment is sufficient."

55.12(c)(page 182.36) after the word "for," strike the word "erroneous".

(c) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state register on the fourteenth day of November, one thousand nine hundred eighty-four, and on the twenty-
first day of March, one thousand nine hundred eighty-five, relating to the state tax commissioner (estimated corporation net income tax), are authorized.

(d) The legislative rules filed in the state register on the twelfth day of March, one thousand nine hundred eighty-five, relating to the state tax commissioner
(identification and appraisal of farmland subsequent to the base year of statewide reappraisal), are authorized and directed to be promulgated with the following amendments:

Title page, Subject; following the word “Farmland,” insert the words “and of Structures Situated Thereon.”

Page 1, Subject; following the word “Farmland,” insert the words “and of Structures Situated Thereon.”

Page 1, TABLE OF CONTENTS, Section 10; following the words “Valuation of Farmland” add the words “and of Structures Situated Thereon.”

Page 10.1, Title; following the word “FARMLAND” insert the words “AND STRUCTURES SITUATED THEREON.”

Page 10.1, Section 10, Title; following the word “Farmland” add the words “and Structures Situated Thereon.”

Page 10.1, Section 10.01(b); following the word “farmland” insert the words “and structures situated thereon.”

Page 10.2, Section 10.02(a), first sentence; following the word “farmland” insert the words “and structures situated thereon.”

Page 10.3, Section 10.02(b), first sentence; following the word “farmland” insert the words “and structures situated thereon.” Delete the words “for purposes of the statewide reappraisal.”

Page 10.3, Section 10.02(b), last sentence; following the word “farmland” insert the words “and structures situated thereon.”

Page 10.8, Section 10.04(5)(B), last sentence; delete the period and add “or the incapability to be adapted to alternative uses.”

Page 10.9, Section 10.04(6), first sentence; following the words “land currently being used” insert the words “as part of a farming operation.”
Page 10.9, Section 10.04(6), following the last sentence; add the sentence "For the purposes of this definition, 'contiguous tracts' are farmlands which are in close proximity, but not necessarily adjacent: Provided, That all such contiguous tracts are operated as part of the same farm management plan."

Page 10.10, Section 10.04(8), is amended to read in its entirety as follows:

"(8) Farm buildings.—The term ‘farm buildings’ shall mean structures which directly contribute to the operation of the farm, and shall include tenant houses and quarters furnished farm employees without rent as a part of the terms of their employment."

Page 10.11, Section 10.04; delete the word “November” and insert in lieu thereof the word “September”. Delete the period following the word “valuation” and add the words, “for the assessment year beginning July first of each year.”

Page 10.11, Section 10.04, insert the following subdivision; “(12) Application Form: The application form required to be filed with the assessor on or before September first of each year shall require certification that the farm complies with criteria set forth in Section 10.05(c) of these regulations, and renewal applications from year to year shall be sufficient upon statement certifying that no change has been made in the use of farm property which would disqualify ‘farm use’ classification for assessment purposes.” Renumber the subdivisions of Section 10.04 following the new 10.04(12); formerly 10.04(12) through 10.04(28), to 10.04(13) through 10.04(29), respectively.

Page 10.14, Section 10.04(28) (formerly 10.04(27)); following the words “woodland products” insert a comma and the words “such as nuts or fruits harvested” and add a comma following the words “human consumption” on Page 10.15.

Page 10.16, Section 10.05, subsection (a), following the words “land is used for farm purposes” by striking the period and inserting in lieu thereof a colon and the
following: "Provided, That the true and actual value of all farm used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: Provided, however, That nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporations."

Page 10.16, Section 10.05(b), first clause; following the words "following factors shall be" insert the words "indicative of but not conclusive" and delete the word "considered".

Page 10.16, Section 10.05(b)(2); delete the period and add the words "such as soil conservation, farmland preservation or federal farm lending agencies."

Page 10.17, Section 10.05(b)(7); delete the section and insert in lieu thereof the words "(7) Whether or not the farmer practices ‘custom farming’ on the land in question."

Page 10.17, Section 10.05(b)(9); following the word "type" add a comma and insert the word "utility".

Page 10.17, Section 10.05(b)(11), first sentence; following the word "sales" insert the words "for nonfarm uses."

Page 10.17, Section 10.05(b)(12)(A); following the words "part of" insert the words "or appurtenant to."

Page 10.17, Section 10.05(b)(12)(B); following the words "contiguous to" insert the words "or operated in common with".

Page 10.18, Section 10.05, subsection (c), the first sentence of which is amended in its entirety to read as follows: "Qualifying farmland and the structures situated thereon shall be subject to farm use valuation,
Page 10.18, Section 10.05(b)(12)(B); delete the semicolons and the words “it was purchased at the same time as the tract so used.” Delete the period following the word “purposes” and add the words “or any nonfarm use.”

Page 10.19, Section 10.05(c)(2); following the words “Provided, That no” delete the word “reason” and insert in lieu thereof the words “individual event”.

Page 10.20, Section 10.05(c)(4)(C); following the words “(1,000) minimum production value” insert the words “or the small farm five hundred dollars ($500) minimum production and sale.”

Page 10.23, Section 10.05(d)(3)(B), third sentence; following the word “If” insert the words “timber from”. Delete the period following the word “purpose” and add the words “or is being converted to farm production uses.”

Page 10.26, Section 10.05(f)(2) is amended in its entirety to read as follows:

“(2) Farm buildings.—Rental value of farm buildings and other improvements on the farmland shall be valued by determining the replacement cost of the building or structure by usual farm construction practices, and farm labor standards and subtracting therefrom depreciation.¹ Both of these determinations shall be made in accordance with the tax department’s real property appraisal manual² as filed in the state register in accordance with chapter 29A of the code of West Virginia, 1931, as amended, and as it relates to agricultural buildings and structures. One (1) acre of land shall be assigned to all buildings as a unit situate on the property, regardless of the actual acreage occupied by such buildings and shall be appraised at its farm-use valuation based on the highest class of farmland present on the farm.”

Page 10.28, Section 10.05(f)(3)(B)(1); following the words “or more of the” insert the word “usual”.

with primary consideration being given to the income which the property might be expected to earn, in the locality wherein situate, if rented.”
Page 10.28, Section 10.05(f)(3)(B)(2); following the words "(50%) of the" insert the word "usual".

Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the words "(50%) or more of the" insert the word "usual".

Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the words "(50%) of the" insert the word "usual".

Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the last sentence insert the sentence "An individual employed other than in farming is not an unincorporated business."

Page 10.35, Section 10.07, Title; following the word "Farmland" insert the words "and Structures Situated Thereon."

Page 10.35, Section 10.07(a), first sentence; following the word "farmland" insert the words "and structures situated thereon."

Page 10.46, Subject; following the word "Farmland" insert the words "and Structures Situated Thereon."

(e) The legislative rules filed in the state register on the twenty-second day of May, one thousand nine hundred eighty-five, relating to the state tax commissioner (rules governing the operation of a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property), are authorized.

(f) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, relating to the state tax commissioner (listing of interests in natural resources for the first statewide reappraisal; provision for penalties), are authorized.

(g) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state
register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (review of appraisals by county commissions sitting as administrative appraisal review boards), are authorized.

(h) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (review of appraisals by a circuit court on certiorari), are authorized with the following amendment:

On page 3, §18.3.1 is stricken in its entirety and a new §18.3.1 is inserted in lieu thereof to read as follows:

"18.3.1 Who May Request Review.—The property owner, Tax Commissioner, protestor or intervenor may request the county commission to certify the evidence and remove and return the record to the circuit court of the county on a writ of certiorari. Parties to the proceeding wherein review by the circuit court is sought shall pay costs and fees as they are incurred: Provided, That the circuit court upon rendering judgment or making any order may award costs to any party in accordance with the provisions of W. Va. Code §53-3-5."

(i) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (administrative review of appraisals by the state tax commissioner), are authorized.

(j) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-
making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (additional review and implementation of property appraisals), are authorized.

(k) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, relating to the state tax commissioner (guidelines for assessors to assure fair and uniform personal property values), are authorized.

(l) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of December, one thousand nine hundred eighty-six, relating to the state tax commissioner (registration of transient vendors), are authorized.

(m) The legislative rules filed in the state register on the fourth day of February, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objection of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-seven, relating to the state tax commissioner (business and occupation tax), are authorized.

(n) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of November, one thousand nine hundred eighty-seven, relating to the state tax commissioner (telecommunications tax), are authorized.

(o) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, relating to the state tax commissioner (business franchise tax), are authorized.
(p) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred eighty-seven, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred eighty-eight, relating to the state tax commissioner (consumers sales and service tax and use tax), are authorized.

(q) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred eighty-eight, relating to the state tax commissioner (appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes), are authorized.

(r) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of January, one thousand nine hundred eighty-eight, relating to the state tax commissioner (severance tax), are authorized.

(s) The legislative rules filed in the state register on the second day of September, one thousand nine hundred eighty-eight, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-nine, relating to the state tax commissioner (solid waste assessment fee), are authorized.

(t) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred eighty-eight, modified by the state tax commissioner to meet the objections of the legislative rule-making review
committee and refiled in the state register on the twenty-first day of September, one thousand nine hundred eighty-eight, relating to the state tax commissioner (electronic data processing system network for property tax administration), are authorized.

(u) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-eight, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-nine, relating to the state tax commissioner (exemption of property from ad valorem property taxation), are authorized.

(v) The legislative rules filed in the state register on the sixteenth day of September, one thousand nine hundred eighty-eight, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred eighty-nine, relating to the state tax commissioner (consumers sales and service tax and use tax), are authorized.

(w) The legislative rules filed in the state register on the twenty-third day of June, one thousand nine hundred eighty-nine, relating to the state tax department (personal income tax), are authorized.

(x) The legislative rules filed in the state register on the twenty-ninth day of June, one thousand nine hundred eighty-nine, relating to the state tax department (severance tax), are authorized.

(y) The legislative rules filed in the state register on the fourth day of August, one thousand nine hundred eighty-nine, modified by the state tax department to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the state tax department (solid waste assessment fee), are authorized.
(z) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (business franchise tax), are authorized.

(aa) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (business and occupation tax), are authorized.

(bb) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of January, one thousand nine hundred ninety, relating to the department of tax and revenue (consumers sales and service tax and use tax), are authorized with the amendments set forth below:

On page eight, Section 2.28, after the word “as” by inserting the words “art, science,.”.

On pages eight and nine, Section 2.28.1, after the word “intellectual” by deleting the word “or” and inserting in lieu thereof the words “physical and”.

On page nine, Section 2.28.2, by deleting the words “or instruction”.

On page nine, Section 2.28.2, after the word “training” by adding the word “or”.

On page nine, Section 2.28.2, by deleting the words “or any portion of a school curriculum classified as physical education”.

On page nine, by deleting all of Section 2.28.2.1.

On page nine, Section 2.28.2.2, by deleting the section number.

On page nine, Section 2.28.2.2, by deleting the words "or instruction".

On page nine, Section 2.28.2.2, after the word "training" by adding the word "or".

On page nine, Section 2.28.2.2, after the word "conditioning" by inserting a period and striking the remainder of the sentence.

On page one hundred twelve, Section 59.2, after the words "sales of the service of cremation" by adding the words "sales on perpetual care trust fund deposits".

And,

On page one hundred twenty-eight, Section 91.2, after the words "include food" by inserting the following: "as defined in section 2.30 of this rule,"

(cc) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (motor carrier road tax), are authorized.

(dd) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (gasoline and special fuel excise tax), are authorized.

(ee) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred
eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (corporation net income tax), are authorized.

(ff) The legislative rules filed in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (soft drinks tax), are authorized.

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of highways.
§64-8-2. Division of motor vehicles.

§64-8-1. Division of highways.

1 (a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the commissioner of highways (transportation of hazardous waste by highway transporters), are authorized with the amendments set forth below:

Pages 3 and 7 after "40 CFR part 262" add the words "as amended through March 8, 1986,"

Page 7 after "49 CFR parts 171-179" add the words "as amended through March 8, 1986," and

Page 11 after "49 CFR part 171.16" add the words "as amended through March 8, 1986."

(b) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred eighty-four, relating to the commissioner of highways (construction and reconstruction of state roads), are authorized with the amendments set forth below:
18 Page 16, Sec. 8.08, line 21, (unnumbered), by inserting after the word “all” the following language: “reasonable and necessary” and after the word “project” inserting the following language: “by the Railroad”.

22 Page 16, Sec. 8.08, line 22, (unnumbered), after the word “the” by striking the words “Railroad’s Chief”.

24 Page 19, Sec. 8.08, line 25, (unnumbered), by striking “Railroad’s Chief” and adding the following new language:

Any approval by the Department of any activity by the Contractor upon the right-of-way or premises of any Railroad which is provided for in this Section (8.08) (including, but not limited to, approval of work, methods, or procedures of work to be done, and the condition of premises after completion of work by the Contractor) shall in no way create any liability by the Department to the Railroad except to the extent provided otherwise by law and the Contractor shall, during all periods of construction and thereafter, indemnify and save harmless the department from any and all liability to the Railroad or any third parties for any damages as a result of the work of the Contractor, the methods and procedures for performing work, the failure of the Contractor to properly remove equipment, surplus material and other debris upon the Railroad premises, or the condition of the premises of the Railroad during construction or after completion of construction by the Contractor as approved by the Department or otherwise.

47 Page 18, Sec. 8.08, subdivision (a), line 22, (unnumbered), by striking the words “single limit” and inserting in lieu thereof the following language: “per occurrence”.

51 Page 19, Sec. 8.08, subdivision (b), line 8, (unnumbered), by striking the words “single limit” and inserting in lieu thereof the following language: “per occurrence”.

55 Page 19, Sec. 8.08 (c), line 18, (unnumbered), by inserting after the word “occurrence” the following
language: "of"; and after the word "injury" insert a comma and strike the word "or".

(c) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-four, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of highways (transportation of hazardous waste), are authorized with the amendment set forth below:

Page 5, by amending §3.01 by adding thereto a new subsection, designated subsection (4), to read as follows:

"(4) Before accepting hazardous waste from a rail transporter, a highway transporter must sign and date the manifest and provide a copy to the rail transporter."

(d) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-four, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of highways (disqualification and suspension of prequalified contractors), are authorized.

(e) The legislative rules filed in the state register on the twelfth day of December, one thousand nine hundred eighty-five, relating to the commissioner of highways (transportation of hazardous wastes by vehicle upon the roads and highways of this state), are authorized with the amendments set forth below:

On page 18, the first line of §3.03 shall read as follows:

"3.03. Transporters who only accept Hazardous Waste from".

(f) The legislative rules filed in the state register on
the first day of December, one thousand nine hundred eighty-seven, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-eight, relating to the commissioner of highways (traffic and safety rules and regulations), are authorized with the amendment set forth below:

On page 8, section 7.2, line 9, (unnumbered), by striking everything after the word "structures".

(g) The legislative rules filed in the state register on the first day of December, one thousand nine hundred eighty-seven, relating to the commissioner of highways (construction and reconstruction of state roads), are authorized.

(h) The legislative rules filed in the state register on the twenty-fifth day of February, one thousand nine hundred eighty-seven, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred eighty-seven, relating to the commissioner of highways (transportation of hazardous wastes upon the roads and highways), are authorized.

(i) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of December, one thousand nine hundred eighty-nine, relating to the division of highways (use of state road rights-of-way and areas adjacent thereto), are authorized with the amendments set forth below:

On Pages 14 and 15, Section 7.5, by deleting the following language:

"Upon receipt of a permit application an application number shall be assigned by the Division of Highways. The applicant shall be notified of the temporary
application number and shall then be required to publish a Class II legal advertisement in the newspaper(s) serving the area where the proposed outdoor advertising sign, display or device is proposed to be located. A copy of the certificate of publication shall be provided to the Department within ten (10) days of the final publication date.

"As a minimum the advertisement shall include the application number, the location (including ownership of the property upon which the sign is to be placed) and shall notify the public that comments will be received by the Division of Highways, Highway Services Section, until 10 days after the final publication. The advertisement shall also state that all comments must include the specific application number to which they refer.

"Any person who claims to be affected by the proposed sign may submit written comments to the Division of Highways, Highway Services Section, and may request a public hearing within ten days of the final publication. Within ten working days of the close of the comment period the Division shall determine whether to approve, deny, or hold a public hearing for said permit.

"When the Division determines that a public hearing is required it shall notify the person(s) who requested the hearing and the permit applicant. The Division shall cause notice to be published and hold the hearing in accordance with Administrative Regulations, Commissioner of Highways, Chapter 17-2A, Series I (1982), Section 3, Hearing Procedures (hereinafter WV Adm. Reg. 17-2A).

"The Division Administrator shall assess the Division’s costs of the hearing against the permit applicant or against the party requesting the hearing if he finds that either the application for the permit or the request for hearing was filed in bad faith.

"Any party adversely affected by the final decision of the Division Administrator may apply for judicial review through application for a writ of certiorari to the Circuit Court of Kanawha County in accordance with W. Va. Code § 53-3-1 and W. Va. Code § 14-2-2.
"The regulations in the preceding six paragraphs relating to publication of notice of an application, comments on a pending application, notice of hearing, hearing on permit, assessment of costs and judicial review shall not apply to an application for a permit for an advertising sign, display or device to be located within the boundaries of an incorporated municipality or of a county-zoned commercial or industrial area."

(j) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred eighty-nine, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of November, one thousand nine hundred eighty-nine, relating to the division of highways (construction and reconstruction of state roads), are authorized.

(k) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of December, one thousand nine hundred eighty-nine, relating to the division of highways (acquisition, disposal, lease and management of real property and appurtenant structures and relocation assistance), are authorized.

§64-8-2. Division of motor vehicles.

(a) The legislative rules filed in the state register on the second day of December, one thousand nine hundred eighty-two, relating to the commissioner of motor vehicles (denial of driving privileges), are authorized with the amendments set forth below:

By inserting the words "licensed in the United States" after the phrase "physician of the applicant's choice," on page five, line two, and page seven, line one; and by striking out the words "licensed vision specialist" and inserting in lieu thereof the words "an optometrist or ophthalmologist licensed in the United States," on page five, line three, and on page seven, line two.
(b) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (driving under the influence, drivers' license revocation administrative hearings), are authorized.

(c) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-three, relating to the department of motor vehicles (safety and treatment program), are authorized.

(d) The legislative rules filed in the state register on the sixteenth day of June, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (compulsory insurance), are authorized.

(e) The legislative rules filed in the state register on the twentieth day of November, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (titling a vehicle), are authorized.

(f) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred eighty-four, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (compulsory motor vehicle liability insurance), are authorized.

(g) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred eighty-five, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, one thousand nine hundred eighty-five, relating to the commissioner of motor vehicles (eligibility for reinstatement following suspension or revocation of driving privileges), are authorized.

(h) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred
eighty-five, relating to the commissioner of motor vehicles (the administration and enforcement of motor vehicle inspections), are authorized.

(i) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-six, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of motor vehicles (seizure of a driver's license and issuance of a temporary driver's license), are authorized.

(j) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-six, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of motor vehicles (federal safety standards inspection program), are authorized.

(k) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred eighty-seven, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, one thousand nine hundred eighty-seven, relating to the commissioner of motor vehicles (denial, suspension, revocation or renewal of driving privileges), are authorized with the amendment set forth below:

On page 7, section 7.2 after the words "75 m.p.h.", add the words "except on highways where the established speed limit is 65 m.p.h., and conviction was in excess of 80 m.p.h.",

And,

On page 14, section 8.1 by inserting the words "not to exceed fifteen hours" after the word "course" and in section 8.2 by inserting the words "not to exceed fifteen hours" after the word "course".
(l) The legislative rules filed in the state register on the twenty-second day of November, one thousand nine hundred eighty-eight, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred eighty-nine, relating to the commissioner of motor vehicles (denial, suspension, revocation or nonrenewal of driving privileges), are authorized.

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of agriculture.
§64-9-5. Board of barbers and beauticians.
§64-9-7. State boards of examination or registration; West Virginia board of chiropractic examiners.
§64-9-8. West Virginia board of examiners in counseling.
§64-9-10. West Virginia board of dental examiners.
§64-9-12. West Virginia state board of registration for professional engineers.
§64-9-14. West Virginia housing development fund.
§64-9-16. Board of medicine.
§64-9-17. West Virginia board of examiners for licensed practical nurses.
§64-9-18. Board of examiners for registered professional nurses.
§64-9-20. Board of pharmacy.
§64-9-23. Real estate commission.

§64-9-1. Commissioner of agriculture.

1 (a) The legislative rules filed in the state register on the sixth day of April, one thousand nine hundred eighty-three, relating to the commissioner of agriculture
(schedule of charges for inspection services: fruit), are authorized.

(b) The legislative rules filed in the state register on the third day of August, one thousand nine hundred eighty-three, relating to the commissioner of agriculture (licensing of auctioneers), are authorized.

(c) The legislative rules filed in the state register on the eighth day of February, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (conduct of beef industry self-improvement assessment program referendum), are authorized.

(d) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (feeding untreated garbage to swine), are authorized.

(e) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (registration, taxation and control of dogs), are authorized.

(f) The legislative rules filed in the state register on the first day of November, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (public markets), are authorized.

(g) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (noxious weed rules), are authorized.

(h) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (animal disease control), are authorized.

(i) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (use of certain picloram products), are authorized.

(j) The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred
eighty-five, relating to the commissioner of agriculture
(increasing certain fees by rules and regulations), are
authorized.

(k) The legislative rules filed in the state register on
the thirteenth day of January, one thousand nine
hundred eighty-six, modified by the commissioner of
agriculture to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the thirty-first day of January, one thousand
nine hundred eighty-six, relating to the commissioner of
agriculture (licensing of livestock dealers), are
authorized.

(l) The legislative rules filed in the state register on
the eighteenth day of June, one thousand nine hundred
eighty-six, modified by the commissioner of agriculture
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
fifth day of January, one thousand nine hundred eighty-
seven, relating to the commissioner of agriculture (West
Virginia pesticide use and application act), are
authorized.

(m) The legislative rules filed in the state register on
the eighteenth day of August, one thousand nine hundred
eighty-six, modified by the director of the
division of forestry of the department of agriculture to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the fifth
day of January, one thousand nine hundred eighty-
seven, relating to the director of the division of forestry
of the department of agriculture (ginseng), are
authorized.

(n) The legislative rules filed in the state register on
the tenth day of April, one thousand nine hundred
eighty-seven, relating to the commissioner of agriculture
(schedule of charges for inspection services: fruit), are
authorized.

(o) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
eighty-seven, modified by the commissioner of agricul-
ture to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
eight day of September, one thousand nine hundred
eighty-seven, relating to the commissioner of agriculture
(Animal disease control), are authorized.

(p) The legislative rules filed in the state register on
the fifteenth day of September, one thousand nine
hundred eighty-eight, relating to the commissioner of
agriculture (sale and distribution of commercial fertil-
izer), are authorized.

(q) The legislative rules filed in the state register on
the fifteenth day of September, one thousand nine
hundred eighty-eight, modified by the commissioner of
agriculture to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-sixth day of October, one
thousand nine hundred eighty-eight, relating to the
commissioner of agriculture (animal disease control),
are authorized.

(r) The legislative rules filed in the state register on
the fifteenth day of May, one thousand nine hundred
eighty-nine, modified by the commissioner of agricul-
ture to meet the objections of the legislative rule-
making review committee and refiled in the state register on the
twenty-first day of August, one thousand nine hundred
eighty-nine, relating to the commissioner of agriculture
(production of milk and cream for manufacturing
purposes), are authorized.

(s) The legislative rules filed in the state register on
the seventh day of August, one thousand nine hundred
eighty-nine, modified by the commissioner of agricul-
ture to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twenty-third day of October, one thousand nine hundred
eighty-nine, relating to the commissioner of agriculture
(Animal disease control), are authorized.


The legislative rules filed in the state register on the
twentieth day of February, one thousand nine hundred
eighty-five, relating to the state athletic commission
(professional and amateur boxing), are authorized.

(a) The legislative rules filed in the state register on the sixth day of December, one thousand nine hundred eighty-four, relating to the attorney general (third party dispute mechanisms), are authorized.

(b) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the attorney general (fair treatment of crime victims and witnesses), are authorized.

(c) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-six, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred eighty-six, relating to the attorney general (prevention of unfair or deceptive acts or practices in home improvement and home construction transactions), are authorized. These rules were proposed by the attorney general pursuant to section one hundred three, article six and section one hundred two, article seven of chapter forty-six-a of this code with the following amendments:

Amending the title to the proposed legislative rule wherever said title may appear, on lines three and four thereof, by striking the words “and home construction”.

On the index page following “3.” by striking the words “and home construction”.

On page 1, §1.2, line three, after the first word “transactions” on line three, by striking the comma and the words “and home construction transactions” and on line five, by striking the period and inserting the words “but shall not cover new construction of single-family dwellings or rebuilding all or substantially all of an existing or preexisting single-family dwelling.”

Page 2, section 2.2 by striking all of lines seven and eight and inserting in lieu thereof the following:
37 "unless: (a) it appears in printed or typed face larger
38 than the largest type used in the written contract,
39 apart”.

On page 2, section 2.4, by striking all of section 2.4
40 and inserting in lieu thereof a new section 2.4, to read
41 as follows:
42
43 "2.4 ‘Home Construction’ means, for the purpose of
44 this Rule, the repair, remodeling or the building of
45 additions to existing single-family dwelling units,
46 including single-family homes, condominium units or
47 any other dwelling unit to be used by any person
48 primarily for personal or family use, but shall not
49 include new single-family home construction or the
50 rebuilding of all or substantially all of an existing or
51 preexisting single-family dwelling.”

Page 3, section 2.6, on line two thereof, after the
53 second comma by inserting the word “replacement”.

Page 3, section 3, by striking the words “and home
55 construction” from the section heading.

Page 3, section 3.1, lines one and two, by striking the
57 words “or home construction”.

Page 4, section 3.1.4, on lines one and two thereof, by
59 striking the words “or home construction”.

Page 4, section 3.1.8, on line two thereof, by striking
61 the words “or home construction”.

Page 4, section 3.1.9, on lines two and three thereof,
63 by striking the words “or home construction”.

Page 5, section 3.1.12, on lines one and two thereof,
65 by striking the words “or home construction”.

Page 6, section 3.1.26, by striking all of section 3.1.26
67 and renumbering the subsequent subsections.

Page 7, section 3.1.29, on lines one and two thereof,
69 by striking the words “or home construction”.

Page 7, section 3.1.29, on line six thereof, following the
71 word “contract” by inserting a period and striking the
72 remainder of the section.
Page 7, following section 3.1.29 by adding a new section to be designated section 3.1.29, to read as follows:

“failed to file a certificate in the office of the Clerk of the County Commission in the county in which the principal place of business of the seller is located, setting forth the assumed name in or by which the business is being conducted in conformity with the provisions of Chapter 47, Article 8, Section 2 of the Code of West Virginia, 1931, as amended.”

Page 7, section 3.2, on lines two and three thereof, by striking the words, “or home solicitation sale of home construction” and the comma on line three.

Page 9, section 4.1, on line eight thereof, by deleting the period and inserting the following:

“to the extent permitted by statute.”

Page 10, section 4.2, on line 9 thereof, by striking the period and inserting the following:

“to the extent permitted by statute.”

(d) The legislative rules filed in the state register on the twenty-third day of September, one thousand nine hundred eighty-six, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred eighty-six, relating to the attorney general (prevention of unfair or deceptive acts or practices in the sale of damaged goods or products), are authorized.

(e) The legislative rules filed in the state register on the twenty-third day of September, one thousand nine hundred eighty-seven, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of November, one thousand nine hundred eighty-seven, relating to the attorney general (administration of preneed burial contracts), are authorized with the following amendments set forth below:

On page 9, section 8.2 by striking the words “within
thirty days after the death of a contract beneficiary,”
and inserting in lieu thereof the following: “On or before
the first day of January and the first day of July of each
year,” and after the word “provided” by striking the
comma and inserting in lieu thereof “after the death of
any contract beneficiary during the previous six-month
period.”.

On page 12, section 9.7 by striking all of 9.7.

Beginning on page 15, by striking the entirety of
section 15.

And,

Beginning on page 18, by striking the entirety of
section 16, and by renumbering the remaining sections.

(f) The legislative rules filed in the state register on
the eleventh day of August, one thousand nine hundred
eighty-nine, modified by the attorney general to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-sixth day of October, one thousand nine hundred
eighty-nine, relating to the attorney general (allowing
persons who are indirectly injured by violations of the
West Virginia antitrust act to recover damages), are
authorized.

(g) The legislative rules filed in the state register on
the fourteenth day of August, one thousand nine
hundred eighty-nine, modified by the attorney general
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
fifteenth day of December, one thousand nine hundred
eighty-nine, relating to the attorney general (health
spas), are authorized.


(a) The legislative rules filed in the state register on
the twenty-first day of December, one thousand nine
hundred eighty-three, relating to the state auditor,
securities commissioner (broker-dealers, agents and
advisors), are authorized with the amendments set forth
below:
Section 14.06, delete the words "as subsequently amended" and reinsert the words "as amended March 30, 1982".

Section 14.07 place a period after "1976" and delete the words "as subsequently amended".

(b) The legislative rules filed in the state register on the eighteenth day of January, one thousand nine hundred eighty-five, relating to the state auditor, securities commissioner (filing fee), are authorized.

§64-9-5. Board of barbers and beauticians.

(a) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (minimum curriculum for schools of barbering), are authorized with the amendment set forth below:

On page 9, by inserting a new section, designated section 3-6-14, to read as follows:

"§3-6-14. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

(b) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (qualifications, training, examination and registration of instructors in barbering and beauty culture), are authorized with the amendment set forth below:

On page 6, by inserting a new section, designated section 3-2-9, to read as follows:
“§3-2-9. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

(c) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (operation of barber shops and schools of barbering), are authorized with the amendment set forth below:

On page 5, by inserting a new section, designated section 3-3-6, to read as follows:

“§3-3-6. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

(d) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (curriculum and minimum requirements, subjects and hour schedule, rules and regulations for schools of beauty culture operation in West Virginia: joint barbers and beauticians license), are authorized with the amendments set forth below:

On page 7, by inserting a new section, designated section 3-1-11, to read as follows:

“§3-1-11. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

(e) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-
making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (operation of beauty shops and schools of beauty culture), are authorized with the amendments set forth below:

On page 4, by inserting a new section, designated section 3-4-6, to read as follows:

"§3-4-6. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

And,

On page 4, by inserting a new subsection, designated section 3.25, to read as follows:

"3.25 Notwithstanding any law to the contrary or interpretation of law to the contrary, any licensed beautician may trim beards or mustaches."

(f) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (licensing schools of barbering or beauty culture), are authorized with the amendments set forth below:

On page 2, subsection 4.1, by deleting subdivision (b) and relettering the remaining subdivisions.

On page 6, by inserting a new section, designated section 3-5-8, to read as follows:

"§3-5-8. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."


The legislative rules filed in the state register on the
The legislative rules filed in the state register on the twentieth day of March, one thousand nine hundred eighty-nine, modified by the West Virginia board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of September, one thousand nine hundred eighty-nine, relating to the West Virginia board of examiners in counseling (licensing), are authorized.


The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-eight, modified by the governor's committee on crime, delinquency and corrections to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of September, one thousand nine hundred eighty-eight, relating to the governor's committee on crime, delinquency and corrections (basic training academy, annual in-service and biennial in-service training standards), are authorized.
§64-9-10. West Virginia board of dental examiners.

1 The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred eighty-nine, modified by the West Virginia board of dental examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of October, one thousand nine hundred eighty-nine, relating to the West Virginia board of dental examiners (West Virginia board of dental examiners), are authorized.


1 (a) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred eighty-four, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of embalmers and funeral directors (apprenticeship), are authorized.

10 (b) The legislative rules filed in the state register on the sixteenth day of October, one thousand nine hundred eighty-five, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of July, one thousand nine hundred eighty-six, relating to the board of embalmers and funeral directors (governing the board of embalmers and funeral directors), are authorized.

§64-9-12. West Virginia state board of registration for professional engineers.

1 (a) The legislative rules filed in the state register on the twenty-ninth day of November, one thousand nine hundred eighty-five, modified by the West Virginia state board of registration for professional engineers to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia state
board of registration for professional engineers (legisla-
tive rules governing the West Virginia state board of
registration for professional engineers), are authorized.

(b) The legislative rules filed in the state register on
the twenty-third day of December, one thousand nine
hundred eighty-seven, modified by the West Virginia
state board of registration for professional engineers to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-ninth day of January, one thousand nine hundred
eighty-eight, relating to the West Virginia state board
of registration for professional engineers (rules of the
West Virginia state board of registration for profes-


The legislative rules filed in the state register on the
twenty-sixth day of November, one thousand nine
hundred eighty-five, modified by the West Virginia
board of hearing-aid dealers to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the twenty-eighth day of January,
one thousand nine hundred eighty-six, relating to the
West Virginia board of hearing-aid dealers (rules gov-
erning the West Virginia board of hearing-aid
dealers), are authorized.

§64-9-14. West Virginia housing development fund.

The legislative rules filed in the state register on the
twenty-seventh day of December, one thousand nine
hundred eighty-two, relating to the West Virginia
housing development fund (single-family mortgage
loans), are authorized.


The legislative rules filed in the state register on the
thirty-first day of July, one thousand nine hundred
eighty-seven, modified by the state board of examiners
of land surveyors to meet the objections of the legisla-
tive rule-making review committee and refiled in the state
register on the twenty-eighth day of January, one
thousand nine hundred eighty-eight, relating to the state
board of examiners of land surveyors (practice of land
surveying in West Virginia), are authorized.

§64-9-16. Board of medicine.

(a) The legislative rules filed in the state register on
the twelfth day of May, one thousand nine hundred
eighty-three, relating to the board of medicine (licensing,
disciplinary and complaint procedures; podiatry;
physicians assistants), are authorized with the modific-
tions set forth below:

“§24.12.

(b) It shall be the responsibility of the supervising
physician to obtain consent in writing from the patient
before Type A physician assistants employed in a
satellite clinic may render general medical or surgical
services, except in emergencies.

§24.16.

(c) No physician assistant shall render nonemergency
outpatient medical services until the patient has been
informed that the individual providing care is a
physician assistant.”

(b) The legislative rules filed in the state register on
the twenty-sixth day of November, one thousand nine
hundred eighty-five, modified by the board of medicine
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
seventeenth day of January, one thousand nine hundred
eighty-six, relating to the board of medicine (licensing,
disciplinary and complaint procedures; podiatry; physi-
cians assistants), are authorized.

(c) The legislative rules filed in the state register on
the eighth day of March, one thousand nine hundred
eighty-five, modified by the West Virginia board of
medicine to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the eighteenth day of December, one
thousand nine hundred eighty-five, relating to the West
Virginia board of medicine (rules governing the
approval of medical schools not accredited by the liaison
committee on medical education), are authorized.
(d) The legislative rules filed in the state register on the third day of June, one thousand nine hundred eighty-seven, relating to the board of medicine (fees for services rendered by the board of medicine), are authorized.

(e) The legislative rules filed in the state register on the sixteenth day of September, one thousand nine hundred eighty-eight, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-nine, relating to the board of medicine (dispensing of legend drugs by physicians and podiatrists), are authorized with the following amendments:

Section 2.6 to read as follows: Dispense means to deliver a legend drug to an ultimate user or research subject by or pursuant to the lawful order of a physician or podiatrist, including the prescribing, packaging, labeling, administering or compounding necessary to prepare the drug for that delivery.

Section 3.3 to read as follows: Physicians or podiatrists who are not registered with the Board as dispensing physicians may not dispense legend drugs. However, the following activities by a physician or podiatrist shall be exempt from the requirements of section 3 through 8 applicable to dispensing physicians:

a. Legend drugs administered to the patient, which are not controlled substance when an appropriate record is made in the patient’s chart.

b. Professional samples distributed free of charge by a physician or podiatrist or certified physician assistant under his or her supervision to the patient when an appropriate record is made in the patient’s chart; or

c. Legend drugs which are not controlled substances provided by free clinics or under West Virginia state authorized programs, including the medicaid, family planning, maternal and child health, and early and periodic screening and diagnosis and treatment programs: Provided, That all labeling provisions of section
§64-9-17. West Virginia board of examiners for licensed practical nurses.

(a) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, modified by the West Virginia board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of September, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (policies relating to licensure of the licensed practical nurse), are authorized.

(b) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (legal standards of nursing practice for the licensed practical nurse), are authorized.

(c) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (fees for services rendered by the board), are authorized.

§64-9-18. Board of examiners for registered professional nurses.

The legislative rules filed in the state register on the thirteenth day of September, one thousand nine hundred eighty-three, relating to the board of examiners for registered professional nurses (qualifications of graduates of foreign nursing schools for admission to the professional nurse licensing examination), are authorized.


The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-five, modified by the nursing home administra-
tors licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the nursing home administrators licensing board (governing nursing home administrators), are authorized.

§64-9-20. Board of pharmacy.

(a) The legislative rules filed in the state register on the second day of October, one thousand nine hundred eighty-four, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of pharmacy (parenteral/enteral compounding), are authorized.

(b) The legislative rules filed in the state register on the twelfth day of September, one thousand nine hundred eighty-nine, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred eighty-nine, relating to the board of pharmacy (board of pharmacy), are authorized.


(a) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-four, relating to the board of examiners of psychologists (examination fee), are authorized.

(b) The legislative rules filed in the state register on the sixteenth day of September, one thousand nine hundred eighty-eight, modified by the board of examiners of psychologists to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred eighty-eight, relating to the board of examiners of psychologists (penalties and fees), are authorized.


The legislative rules filed in the state register on the
§64-9-23. Real estate commission.

The legislative rules filed in the state register on the fourth day of December, one thousand nine hundred eighty-nine, modified by the real estate commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety, relating to the real estate commission (renewal of license - continuing education), are authorized.


(a) The legislative rules filed in the state register on the fifteenth day of April, one thousand nine hundred eighty-five, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of October, one thousand nine hundred eighty-five, relating to the secretary of state (standard size and format for rules and related documents filed in the secretary of state's office), are authorized.

(b) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred eighty-seven, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred eighty-seven, relating to the secretary of state (standard size and format for rules and procedures for publication of the state register or parts of the state register), are authorized.

(c) The legislative rules filed in the state register on the first day of September, one thousand nine hundred eighty-nine, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of November, one thousand nine hundred
The legislative rules filed in the state register on the twenty-fourth day of August, one thousand nine hundred eighty-eight, modified by the structural barriers compliance board to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred eighty-nine, relating to the structural barriers compliance board (elimination of structural barriers in public buildings), are authorized.


The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state treasurer (establishment of imprest funds), are authorized.


The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-six, modified by the commercial whitewater advisory board to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of January, one thousand nine hundred eighty-seven, relating to the commercial whitewater advisory board (commercial whitewater outfitters), are authorized with the following amendment:

"On page 1, §2.1, by striking all of §2.1 and inserting in lieu thereof the following: '2.1 Commercial whitewater outfitter means any person, partnership, corporation or other organization, or any combination thereof, duly authorized and operating from within or from without the state, which for monetary profit or gain, provides whitewater expeditions or rents whitewater craft or equipment for use in whitewater expeditions on any river, portions of rivers or waters of the state.'"
CHAPTER 121
(S. B. 188—Originating in the Committee on Confirmations)

[Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to defining the phrase "next meeting of the Senate".

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES: APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§4-1-22. "Next meeting of the Senate" defined.

1 The phrase "next meeting of the Senate" contained in article seven, section nine of the constitution of West Virginia means any time the full Senate is convened and includes, but is not limited to, any regular session, any extraordinary session called during any recess or adjournment of the Legislature, during any impeachment proceeding or any time the Senate is convened pursuant to section ten-a of this article.

CHAPTER 122
(H. B. 4257—By Mr. Speaker, Mr. Chambers, and Delegate Sattes)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to authorizing the joint committee
on government and finance to charge state executive and judicial agencies and private persons, corporations and associations for use of the Legislature's computer subscriber system data bases and providing that the fees collected be deposited in a special revolving fund of the joint committee and be expended on the Legislature's computer system as authorized by the joint committee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-5. Charges for use of the Legislature's computer subscriber system.

1 The joint committee on government and finance is hereby authorized to charge and collect fees from agencies of state executive and judicial departments and from private persons, corporations and associations for access to and use of the Legislature's computer subscriber system data bases in accordance with fees, procedures and restrictions approved by the joint committee. Fees collected are to be deposited in a special revolving fund of the joint committee on government and finance and may be expended for expansion, maintenance and support of the Legislature's computer system as authorized by the joint committee.

CHAPTER 123
(Com. Sub. for H. B. 4712—By Delegate R. Burk)

[Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to future advances secured by a credit line deed of trust;
form; priority over other liens; release; providing an alternative to the caption entitled a credit line deed of trust; to further define future advances to include obligations other than those arising from traditional loan transactions; and to clarify the distinction between obligatory and nonobligatory future advances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-14. Future advances secured by credit line deed of trust; definitions; notice requirements and form; priority over other liens; release.

(a) Definitions: For purposes of this section, the following definitions shall apply:

(1) "Credit line deed of trust" is a deed of trust securing any obligation arising out of a loan agreement, a promissory note, a sales contract, a performance contract, or any other agreement or writing, under the terms of which the indebtedness or other obligation created may increase and/or decrease from time to time.

(2) "Future advance" means any form of increase in the indebtedness or obligation owed to the secured party under the terms of the credit line deed of trust, including, but not limited to, an increase arising from, but not limited to, an application for the same by the obligor; the advancement of loan proceeds pursuant to the terms of the credit line deed of trust or other agreement; the payment of any taxes, insurance premiums, interest, or other obligations pursuant to the terms of the credit line deed of trust or other agreement; or the occurrence of any condition, event or circumstance set forth in the credit line deed of trust.

(3) "Obligatory advance" means any advance which, under the terms of the credit line deed of trust or other agreement, the secured party has legally obligated itself to make in the absence of a default, breach, or other
such event. Obligatory advances include, but are not
limited to, advances which the secured party has agreed
to make as a term or condition of the credit line deed
of trust or other related agreement; obligations arising
out of the occurrence of a condition, event or circum-
stance contemplated by the agreement; obligations
arising on a specified date or time; or advances made
upon application therefor by the grantor under the
credit line deed of trust or by another obligor whose
indebtedness is secured by the deed of trust.

(b) A credit line deed of trust shall comply with all
the provisions of this article and shall either (i) have
clearly entitled at the beginning thereof either in capital
letters or in language underscored, the words, “A
CREDIT LINE DEED OF TRUST”, or (ii) state
conspicuously either immediately above or beneath the
caption at the top of the first page of the credit line deed
of trust the words, “This instrument secures an obliga-
tion that may increase and decrease from time to time.”

A credit line deed of trust shall be, from the time it
is duly recorded as required by law, security for all
indebtedness or other obligations secured thereby at the
time of recording and for all future advances secured
thereby in an aggregate principal amount outstanding
at any time not to exceed the maximum amount stated
in the credit line deed of trust, without regard to
whether the future advances are contracted for at the
time of recordation of the credit line deed of trust or
whether the secured party under the credit line deed of
trust readvances principal sums repaid. The credit line
deed of trust shall also be security for interest on the
principal sums and for taxes, insurance premiums and
other obligations, including interest thereon, undertaken
by the secured party in the credit line deed of trust or
in the related loan agreement, note, contract, or other
agreement or evidences of indebtedness or obligations
secured thereby. The interest, taxes, insurance premi-
ums and other obligations when added to the total
principal amount of the obligations outstanding at any
time may increase the amount secured by the credit line
deed of trust above the stated maximum amount.
(c) A credit line deed of trust, in addition to other provisions of this code, shall conform with the following:

(1) The credit line deed of trust shall contain specific provisions permitting or requiring future advances and stating whether the future advances are intended to be obligatory or nonobligatory;

(2) At no time may the unpaid principal balance of the obligation or indebtedness secured by the credit line deed of trust exceed the maximum amount stated therein, except as specifically provided for in subsection (b) of this section; and

(3) The original credit line deed of trust must be executed and recorded after the sixth day of June, one thousand nine hundred eighty-four.

(d) Except as otherwise provided herein, a credit line deed of trust, to the extent of the principal amount of the loan indebtedness or obligation secured thereby, interest thereon, taxes, insurance premiums and other obligations, including interest thereon, secured thereby, has priority over all other deeds of trust, liens and encumbrances of every nature, however created or arising, to the same extent and for the same amount as if all the amounts were advanced on the date and at the time the credit line deed of trust is recorded.

(e) Any mechanic's lien, abstract of judgment, notice of lis pendens, other deed of trust or other lien of encumbrance, which affects the property encumbered by the credit line deed of trust and which is duly recorded and perfected as required by law after the recording of the credit line deed of trust, shall have priority over any advances secured by the credit line deed of trust that are not obligatory and that are made by the secured party under the credit line deed of trust after receipt by the secured party, at the address provided for the purpose of notification in the credit line deed of trust, of written notice of such mechanic's lien, judgment lien, notice of lis pendens, other deed of trust or other lien or encumbrance. However, any obligatory advances made by the secured party that are secured by the credit line deed of trust or any other related
106 agreement, and any taxes, insurance premiums and
107 obligations which the secured party has agreed to pay,
108 or which under the credit line deed of trust or otherwise
109 the secured party has the right to pay in connection with
110 such credit line deed of trust, shall continue to have the
111 priority created under subsection (b) of this section over
112 a mechanic's lien, judgment lien, notice of lis pendens, 
113 deed of trust or other lien or encumbrance.

114 (f) Notwithstanding any other provision of this code, 
115 the secured party under a credit line deed of trust
116 subject to this section shall be obligated to release the
117 credit line deed of trust at such time as all indebtedness
118 or other obligations secured thereby have been paid in
119 full or otherwise satisfied and the secured party has
120 been duly released from any further obligation to make
121 future advances under any note or agreement secured
122 by the credit line deed of trust. This release shall
123 become effective upon the recording of the release and
124 the secured party shall be released and discharged from
125 any further obligation.

CHAPTER 124
(Com. Sub. for H. B. 4187—By Delegates Murphy and Manuel)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend chapter seven of the code of West Virginia, 
one thousand nine hundred thirty-one, as amended, by
adding thereto a new article, designated article twenty,
relating to the local powers act; purpose and findings;
definitions; authorizing counties to collect fees; credits
and offsets accruing for benefit of development; implement-
ation criteria and requirements; establishment of
new levies and fees; use and administration of impact
fees; refunds of impact fees; and impact fees being
required to be consistent with development regulations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-1. Short title.
§7-20-2. Purpose and findings.
§7-20-3. Definitions.
§7-20-4. Counties authorized to collect fees.
§7-20-5. Credits or offsets to be adjusted; incidental benefit by one development not construed as denying reasonable benefit to new development.
§7-20-6. Criteria and requirements necessary to implement collection of fees.
§7-20-7. Establishment of impact fees; levies may be used to fund existing capital improvements.
§7-20-8. Use and administration of impact fees.
§7-20-9. Refund of unexpended impact fees.
§7-20-10. Impact fees required to be consistent with other development regulations.

§7-20-1. Short title.

1 This article shall be known as the “Local Powers Act.”

§7-20-2. Purpose and findings.

1 (a) It is the purpose of this article to provide for the fair distribution of costs for county development by authorizing the assessment and collection of fees to offset the cost of commercial and residential development within affected counties.

6 (b) The Legislature hereby makes the following findings:

8 (1) The residents, taxpayers and users of county facilities and services, in affected counties, have contributed significant funds in the form of taxes and user charges toward the cost of existing county facilities and services, which represent a substantial and incalculable investment;

14 (2) Affected counties in West Virginia are experiencing an increased demand for development which is causing strain on tax revenues and user charges at existing levels and impairing the ability of taxpayers, residents and users to bear the cost of increased demand for county facilities and services. In some instances,
county borrowing has been required to meet the demand;

(3) Equitable considerations require that future residents and users of existing county facilities and services contribute toward the investment already made in those facilities and services;

(4) Sound fiscal policy in the efficient administration of county government requires that the imposition of taxes and user charges be commensurate to the actual yearly cost of county facilities and services;

(5) Accumulations of large financial reserves for future capital expenditures unjustly exact unneeded current funds from taxpayers and users; and

(6) County borrowing unnecessarily increases the cost of government by the amount of debt service and should be avoided unless considered absolutely necessary to meet an existing public need.

§7-20-3. Definitions.

(a) “Capital improvements” means the following public facilities or assets that are owned, supported or established by county government:

(1) Water treatment and distribution facilities;

(2) Wastewater treatment and disposal facilities;

(3) Sanitary sewers;

(4) Storm water, drainage, and flood control facilities;

(5) Public primary and secondary school facilities;

(6) Public road systems and rights-of-way;

(7) Parks and recreational facilities; and

(8) Police, emergency medical, rescue, and fire protection facilities.

“Capital improvements” as defined herein is limited to those improvements that are treated as capitalized expenses according to generally accepted governmental accounting principles and that have an expected useful life of no less than three years. “Capital improvement”
does not include costs associated with the operation, repair, maintenance, or full replacement of capital improvements. "Capital improvement" does include reasonable costs for planning, design, engineering, land acquisition, and other costs directly associated with the capital improvements described herein.

(b) "County services" means the following: (1) Services provided by administration and administrative personnel, law enforcement and its support personnel; (2) street light service; (3) fire-fighting service; (4) ambulance service; (5) fire hydrant service; (6) roadway maintenance and other services provided by roadway maintenance personnel; (7) public utility systems and services provided by public utility systems personnel, water; and (8) all other direct and indirect county services authorized by this code.

(c) "Direct county services" means those public services authorized and provided by various county agencies or departments.

(d) "Indirect county services" means those public services authorized and provided by commissioned agents, agencies or departments of the county.

(e) "Growth county" means any county within the state with an averaged population growth rate in excess of one percent per year as determined from the most recent decennial census counts and forecasted, within decennial census count years, by official records of government or generally approved standard statistical estimate procedures: Provided, That once "growth county" status is achieved it is permanent in nature and the powers derived hereby are continued.

(f) "User" means any member of the public who uses or may have occasion to use county facilities and services as defined herein.

(g) "Impact fees" means any charge, fee, or assessment levied as a condition of the following: (1) Issuance of a subdivision or site plan approval; (2) issuance of a building permit; and (3) approval of a certificate of occupancy, or other development or construction appro-
val when any portion of the revenues collected is intended to fund any portion of the costs of capital improvements for any public facilities or county services not otherwise permitted by law. An impact fee does not include charges for remodeling, rehabilitation, or other improvements to an existing structure or rebuilding a damaged structure, provided there is no increase in gross floor area or in the number of dwelling units that result therefrom.

(h) “Proportionate share” means the cost of capital improvements that are reasonably attributed to new development less any credits or offsets for construction or dedication of land or capital improvements, past or future payments made or reasonably anticipated to be made by new development in the form of user fees, debt service payments, taxes or other payments toward capital improvement costs.

(i) “Reasonable benefit” means a benefit received from the provision of a capital improvement greater than that received by the general public located within the county wherein an impact fee is being imposed.

(j) “Plan” means a county, comprehensive, general, master or other land use plan as described herein.

(k) “Program” means the capital improvements program described herein.

(l) “Unincorporated area” and “total unincorporated area” means all lands and resident estates of a county that are not included within the corporate, annexed areas or legal service areas of an incorporated or chartered municipality, city, town or village located in the state of West Virginia.

§7-20-4. Counties authorized to collect fees.

County governments affected by the construction of new development projects are hereby authorized to require the payment of fees for any new development projects constructed therein in the event any costs associated with capital improvements or the provision of other services are attributable to such project. Such fees shall not exceed a proportionate share of such costs.
required to accommodate any such new development.
Before requiring payment of any fee authorized hereunder, it must be evident that some reasonable benefit from any such capital improvements will be realized by any such development project.

§7-20-5. Credits or offsets to be adjusted; incidental benefit by one development not construed as denying reasonable benefit to new development.

Credits or offsets for past or future payments toward capital improvement costs shall be adjusted for time-price differentials inherent in fair comparisons of monetary amounts paid or received at different times.
The receipt of an incidental benefit by any development shall not be construed as denying a reasonable benefit to any other new development.

§7-20-6. Criteria and requirements necessary to implement collection of fees.

(a) As a prerequisite to authorizing counties to levy impact fees related to population growth and public service needs, counties shall meet the following requirements:

(1) A demonstration that population growth rate history as determined from the most recent base decennial census counts of a county, utilizing generally approved standard statistical estimate procedures, in excess of one percent annually averaged over a five-year period since the last decennial census count; or a demonstration that a total population growth rate projection of one percent per annum for an ensuing five-year period, based on standard statistical estimate procedures, from the current official population estimate of the county;

(2) Adopting a county-wide comprehensive plan;

(3) Reviewing and updating any comprehensive plan at no less than five-year intervals;

(4) Drafting and adopting a comprehensive zoning ordinance;
Drafting and adopting a subdivision control ordinance;

(6) Keeping in place a formal building permit and review system, which provides a process to regulate the authorization of applications relating to construction or structural modification and which further provides for the systematic and ongoing inspection of existing structures. The county shall adopt, pursuant to section three-n, article one of this chapter, the state building code into any such building permit and review system; and

(7) Providing an improvement program which shall include:

(A) Developing and maintaining a list within the county of particular sites with development potential;

(B) Developing and maintaining standards of service for capital improvements which are fully or partially funded with revenues collected from impact fees; and

(C) Lists of proposed capital improvements from all areas, containing descriptions of any such proposed capital improvements, cost estimates, projected time frames for constructing such improvements and proposed or anticipated funding sources.

(b) Capital improvement programs may include provisions to provide for the expenditure of impact fees for any legitimate county purpose. This may include the expenditure of fees for partial funding of any particular capital improvement where other funding exists from any source other than the county, or exists in combination with other funds available to the county: Provided, That for such expenditures to be considered legitimate no county or other local authority may deny or withhold any reasonable benefit that may be derived therefrom from any development project for which such impact fee or fees have been paid.

(c) Capital improvement programs for public elementary and secondary school facilities may include provisions to spend impact fees based on a computation related to the following: (1) The existing local tax base;
and (2) the adjusted value of accumulated infrastructure investment, based on net depreciation, and any remaining debt owed thereon. Any such computation must establish the value of any equity shares in the net worth of an impacted school system facility, regardless of the existence of any need to expand such facility. Impact fee revenues may only be used for capital replacement or expansion.

(d) Additional development areas may be added to any plan or capital improvements program provided for hereunder if a county government so desires. The standards governing the construction or structural modification for any such additional area shall not deviate from those adopted and maintained at the time such addition is made.

(e) The county may modify annually any capital improvements plan in addition to any impact fee rates based thereon, pursuant to the following:

(1) The number and extent of development projects begun in the past year;

(2) The number and extent of public facilities existing or under construction;

(3) The changing needs of the general population;

(4) The availability of any other funding sources; and

(5) Any other relevant and significant factor applicable to a legitimate goal or goals of any such capital improvement plan.

§7-20-7. Establishment of impact fees; levies may be used to fund existing capital improvements.

(a) Impact fees assessed against a development project to fund capital improvements and public services may not exceed the actual proportionate share of any benefit realized by such project relative to the benefit to the resident taxpayers.

Notwithstanding any other provision of this code to the contrary, those counties that meet the requirements of section six of this article are hereby authorized to
assess, levy, collect and administer any tax or fee as has
been or may be specifically authorized by the Legislature by general law to the municipalities of this state:

Provided, That any assessment, levy or collection shall be delayed sixty days from its regular effective date:

Provided, however, That in the event fifteen percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the county commission within forty-five days after any impact fee or levy is imposed by the county commission, pursuant to this article, the fee or levy protested may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary, general or special election as the county commission directs. Voting thereon may not take place until after notice of the subcommission of the fee a levy on the ballot has been given by publication of Class II legal advertisement and publication area shall be the county where such fee or levy is imposed: Provided further, That counties may not "double tax" by applying a given tax within any corporate boundary in which that municipality has implemented such tax. Any such taxes or fees collected under this law may be used to fund a proportionate share of the cost of existing capital improvements and public services where it is shown that all or a portion of existing capital improvements and public services were provided in anticipation of the needs of new development.

(b) In determining a proportionate share of capital improvements and public services costs, the following factors shall be considered:

(1) The need for new capital improvements and public services to serve new development based on an existing capital improvements plan that shows (A) any current deficiencies in existing capital improvements and services that serve existing development and the means by which any such deficiencies may be eliminated within a reasonable period of time by means other than impact fees or additional levies; and (B) any additional demands reasonably anticipated as the result of capital
improvements and public services created by new development;

(2) The availability of other sources of revenue to fund capital improvements and public services, including user charges, existing taxes, intergovernmental transfers, in addition to any special tax or assessment alternatives that may exist;

(3) The cost of existing capital improvements and public services;

(4) The method by which the existing capital improvements and public services are financed;

(5) The extent to which any new development, required to pay impact fees, has contributed to the cost of existing capital improvements and public services in order to determine if any credit or offset may be due such development as a result thereof;

(6) The extent to which any new development, required to pay impact fees, is reasonably projected to contribute to the cost of the existing capital improvements and public services in the future through user fees, debt service payments, or other necessary payments related to funding the cost of existing capital improvements and public services;

(7) The extent to which any new development is required, as a condition of approval, to construct and dedicate capital improvements and public services which may give rise to the future accrual of any credit or offsetting contribution; and

(8) The time-price differentials inherent in reasonably determining amounts paid and benefits received at various times that may give rise to the accrual of credits or offsets due new development as a result of past payments.

(c) Each county shall assess impact fees pursuant to a standard formula so as to ensure fair and similar treatment to all affected persons or projects. A county commission may provide partial or total funding from general or other nonimpact fee funding sources for
capital improvements and public services directly related to new development, when such development benefits some public purpose, such as providing affordable housing and creating or retaining employment in the community.

§7-20-8. Use and administration of impact fees.

(a) Revenues collected from the payment of impact fees shall be restricted to funding new and additional capital improvements or expanded or extended public services which benefit the particular developments from which they were paid. Except as provided herein, to ensure that developments for which impact fees have been paid receive reasonable benefits relative to such payments, the use of such funds shall be restricted to areas wherein development projects are located. County commissions shall have discretion in determining geographical configurations related to the expenditure of impact fee collections.

(b) Impact fees may only be spent on those projects specified in the capital improvement plan described in this article.

(c) When impact fees are collected, the county commission shall enter into agreements with any affected party providing new development in order to ensure compliance with the provisions of this article.

(d) Impact fee receipts shall be specifically earmarked and retained in a special account. All receipts shall be placed in interest-bearing accounts wherein the interest gained thereon shall accrue. All accumulated interest shall be published at least once each fiscal period. The county commission shall provide an annual accounting for each account containing impact fee receipts showing the particular source and amount of all such receipts collected, earned, or received, and the capital improvements and public services that were funded, in whole or in part, thereby.

(e) Impact fees shall be expended only in compliance with the plan. Impact fee receipts shall be expended within six years of receipt thereof unless extraordinary
and compelling reasons exist to retain them beyond this period. Such extraordinary or compelling reasons shall be identified and published by the county commission in a local newspaper of general circulation for at least two consecutive weeks.

§7-20-9. Refund of unexpended impact fees.

(a) The owner or purchaser of property for which impact fees have been paid may apply for a refund of any such paid fees. Such refund shall be made when a county commission fails to expend such funds within six years from the date such fees were originally collected. The county commission shall notify potential claimants by first class mail deposited in the United States mail and directed to the last known address of any such claimant. Only the owner or purchaser may apply for such refund. Application for any refund must be submitted to the county commission within one year of the date the right to claim the refund arises. All refunds due and unclaimed shall be retained in the special account and expended as required herein, except as provided in this section. The right to claim any refund may be limited by the provisions of section five in this article.

(b) When a county commission seeks to terminate any impact fee requirement, all unexpended funds shall be refunded to the owner or purchaser of the property from whom such fund was initially collected. Upon the finding that any or all fee requirements are to be terminated, the county commission shall place notice of such termination and the availability of refunds in a newspaper of general circulation one time a week for two consecutive weeks and shall also notify all known potential claimants by first class mail deposited with the United States postal service at their last known address. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds may be transferred to the general fund and used for any public purpose. A county commission is released from this notice requirement if there are no unexpended balances within an account or funds being terminated.
§7-20-10. Impact fees required to be consistent with other development regulations.

1 County commissions that require the payment of impact fees in providing capital improvements and public services shall incorporate such financial requirements within a master land use plan in order that any new development or developments are not required to contribute more than their proportionate share of the cost of providing such capital improvements and public services.

CHAPTER 125
(Com. Sub. for H. B. 4399—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed February 27, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine, ten, thirteen, eighteen, nineteen, twenty and twenty-one, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the state lottery; permitting lottery games to use certain gaming themes; permitting security other than bonds to be provided for issuance of licenses; prohibiting lottery director from having any interest in dealing in a lottery; defining and allocating net profit as a residual amount in order to increase prize payouts and total revenues; permitting the legislative auditor to accept the annual audit of an independent certified public accountant to meet the yearly post audit requirement; and permitting official's names to be used in connection with lottery tickets, materials and advertisements.

Be it enacted by the Legislature of West Virginia:

That sections nine, ten, thirteen, eighteen, nineteen, twenty and twenty-one, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 22. STATE LOTTERY ACT.

§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.

§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.

§29-22-13. Prohibited acts; conflict of interest; prohibited gifts and gratuities.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.


§29-22-9. (a) The commission shall initiate operation of the state lottery on a continuous basis at the earliest feasible and practical time, first initiating operation of the preprinted instant winner type lottery. The lottery shall be initiated and shall continue to be operated so as to produce the maximum amount of net revenues to benefit the public purpose described in this article consonant with the public good. Other state government depart-
ments, boards, commissions, agencies and their officers shall cooperate with the lottery commission so as to aid the lottery commission in fulfilling these objectives.

(b) The commission shall promulgate rules and regulations specifying the types of lottery games to be conducted by the lottery: Provided, That:

(1) No lottery may use the results of any amateur or professional sporting event, dog race or horse race to determine the winner.

(2) Electronic video lottery systems must include a central site system of monitoring the lottery terminals utilizing an on-line or dial-up inquiry.

(3) In a lottery utilizing a ticket, each ticket shall bear a unique number distinguishing it from each other ticket.

(4) No lottery utilizing a machine may use machines which dispense coins or currency.

(5) Selection of the winner must be predicted totally on chance.

(6) Any drawings or winner selections shall be held in public and witnessed by an independent accountant designated by the director for such purposes.

(7) All lottery equipment and materials shall be regularly inspected and tested, before and after any drawings or winner selections, by independent qualified technicians.

(8) The director shall establish the price for each lottery and determine the method of selecting winners and the manner of payment of prizes, including providing for payment by the purchase of annuities for prizes payable in installments.

(9) All claims for prizes shall be examined and no prize shall be paid as a result of altered, stolen or counterfeit tickets or materials, or which fail to meet validation rules or regulations established for a lottery. No prize shall be paid more than once, and, in the event of a binding determination by the commission that more
than one person is entitled to a particular prize, the sole
remedy of the claimants shall be the award to each of
them of an equal share in the single prize.

(10) A detailed tabulation of the estimated number of
prizes of each particular prize denomination that are
expected to be awarded in each lottery, or the estimated
odds of winning such prizes shall be printed on any
lottery ticket, where feasible, or in descriptive mate-
rials, and shall be available at the offices of the
commission.

(11) No prizes shall be paid which are invalid and not
contemplated by the prize structure of the lottery
involved.

(12) By purchasing a ticket or participation in a
lottery, a participant agrees to abide by, and be bound
by, the lottery rules which apply to the lottery or game
play involved. An abbreviated form of such rules may
appear on tickets and shall appear on descriptive
materials and shall be available at the offices of the
commission. A participant in a lottery agrees that the
determination of whether the participant is a valid
winner is subject to the lottery or game play rules and
the winner validation tests established by the commis-
sion. The determination of the winner by the commission
shall be final and binding upon all participants in a
lottery and shall not be subject to review or appeal.

(13) The commission shall institute such security
procedures as it deems necessary to ensure the honesty
and integrity of the winner selection process for each
lottery. All such security and validation procedures and
techniques shall be, and remain, confidential, and shall
not be subject to any discovery procedure in any civil
judicial, administrative or other proceeding, nor subject
to the provisions of article one, chapter twenty-nine-b of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended.

(c) The commission shall proceed with operation of
such additional lottery games, including the implement-
ation of games utilizing a variety of existing or future
technological advances at the earliest feasible date. The
commission may operate lottery games utilizing electronic computers and electronic computer terminal devices and systems, which systems must include a central site system of monitoring the lottery terminals utilizing direct communication systems, or other technological advances and procedures, ensuring honesty and integrity in the operation of the lottery.

§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.

(a) The commission shall promulgate rules and regulations for the licensing of lottery sales agents for the sale and dispensing of lottery tickets, materials and lottery games, and the operations of electronic computer terminals therefor, subject to the following:

(1) The commission shall issue its annual license to such lottery sales agents for each lottery outlet and for such fee as is established by the commission to cover its costs thereof, but not to exceed one thousand dollars. Application for licensing as a lottery sales agent shall be on forms to be prescribed and furnished by the director.

(2) No licensee may engage in business exclusively as a lottery sales agent.

(3) The commission shall ensure geographic distribution of lottery sales agents throughout the state.

(4) Before issuance of a license to an applicant, the commission shall consider factors such as the financial responsibility, security, background, accessibility of the place of business or activity to the public, public convenience and the volume of expected sales.

(5) No person under the age of twenty-one may be licensed as an agent. No licensed agent shall employ any person under the age of eighteen for sales or dispensing
of lottery tickets or materials or operation of a lottery terminal.

(6) A license is valid only for the premises stated thereon.

(7) The director may issue a temporary license when deemed necessary.

(8) A license is not assignable or transferable.

(9) Before a license is issued, an agent shall be bonded for an amount and in the form and manner to be determined by the director, or shall provide such other security, in an amount, form and manner determined by the director, as will ensure the performance of the agent's duties and responsibilities as a licensed lottery agent or the indemnification of the commission.

(10) The commission may issue licenses to any legitimate business, organization, person or entity, including, but not limited to, civic or fraternal organizations; parks and recreation commissions or similar authorities; senior citizen centers, state owned stores, persons lawfully engaged in nongovernmental business on state property, persons lawfully engaged in the sale of alcoholic beverages; political subdivisions or their agencies or departments, state agencies, commission operated agencies; persons licensed under the provisions of article twenty-three, chapter nineteen of this code, and religious, charitable or seasonal businesses.

(11) Licensed lottery sales agents shall receive five percent of gross sales as commission for the performance of their duties. In addition, the commission may promulgate a bonus-incentive plan as additional compensation not to exceed one percent of annual gross sales. The method and time of payment shall be determined by the commission.

(12) Licensed lottery sales agents shall prominently display the license on the premises where lottery sales are made.

(13) No person or entity or subsidiary, agent or subcontractor thereof shall receive or hold more than
twenty-five percent of the licenses to act as licensed
lottery sales agent in any one county or municipality nor
more than five percent of the licenses issued throughout
this state: Provided, That the limitations of twenty-five
percent and five percent in this subdivision shall not
apply if it is determined by the commission that there
are not a sufficient number of qualified applicants for
licenses to comply with these requirements.

(b) The commission shall promulgate rules and
regulations specifying the terms and conditions for
contracting with lottery retailers for sale of preprinted
instant type lottery tickets and may provide for the
dispensing of such tickets through machines and
devices. Tickets may be sold or dispensed in any public
or private store, operation or organization, without
limitation. The commission may establish an annual fee
not to exceed fifty dollars for such persons, per location
or site, and shall issue a certificate of authority to act
as a lottery retailer to such persons. The commission
shall establish procedures to ensure the security, honesty
and integrity of the lottery and distribution system. The
commission shall establish the method of payment,
commission structure, methods of payment of winners,
including payment in merchandise and tickets, and may
require prepayment by lottery retailers, require bond or
security for payment and require deposit of receipts in
accounts established therefor. Retailers shall promi-
nently display the certificate of authority issued by the
commission on the premises where lottery sales are
made.

§29-22-13. Prohibited acts; conflict of interest; prohibited
gifts and gratuities.

(1) The commissioners, the director, the deputy
directors and the employees of the lottery may not,
directly or indirectly, individually, or as a member of
a partnership or as a shareholder of a corporation have
an interest in dealing in a lottery.

(2) A member of the commission, the director, and an
employee of the lottery or a member of their immediate
families may not ask for, offer to accept, or receive any
§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

(a) There is hereby created a special fund in the state treasury which shall be designated and known as the "state lottery fund." The fund shall consist of all appropriations to the fund and all interest earned from investment of the fund, and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the state treasurer and placed into the "state lottery fund." The revenue shall be disbursed in the manner herein provided for the purposes stated herein and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds shall be made to the commission or lottery fund after the initial appropriation.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.
(d) Not more than fifteen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) shall be allocated as net profit. The director is authorized to expend the necessary percentage of the amount allocated as net profit, not to exceed six percent of the gross amount received, for the purposes of entering into contractual arrangements for the acquisition, financing, lease and lease-purchase, and other financing transactions, of lottery goods and services, including tickets, equipment, machinery, electronic computer systems and terminals, and supplies and maintenance therefor, for the first thirty-six months of operation, and may apportion the costs, expenses and expenditures related thereto among the commission, vendor or vendors and licensed lottery sales agents. In the event that the percentage allotted for operations and administration generates a surplus, the surplus will be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.

(f) Annually, the Legislature shall appropriate all of the amounts allocated as net profits above, in such proportions as it deems beneficial to the citizens of this state, to (1) the lottery education fund created in subsection (g) of this section, (2) the lottery senior citizens fund created in subsection (h) of this section, and (3) the commerce division created in article one, chapter five-b of this code, in accordance with subsection (i) of this section.
(g) There is hereby created a special fund in the state treasury which shall be designated and known as the "lottery education fund." The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the lottery education fund by the state treasurer. The lottery education fund shall also consist of all interest earned from investment of the lottery education fund, and any other appropriations, gifts, grants, contributions or moneys received by the lottery education fund from any source. The revenues received or earned by the lottery education fund shall be disbursed in the manner provided below and shall not be treated by the auditor and treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery education fund to the state system of public and higher education for such educational programs as it considers beneficial to the citizens of this state.

(h) There is hereby created a special fund in the state treasury which shall be designated and known as the "lottery senior citizens fund." The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the lottery senior citizens fund by the state treasurer. The lottery senior citizens fund shall also consist of all interest earned from investment of the lottery senior citizens fund, and any other appropriations, gifts, grants, contributions or moneys received by the lottery senior citizens fund from any source. The revenues received or earned by the lottery senior citizens fund shall be disbursed in the manner provided below and shall not be treated by the auditor or treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery senior citizens fund to such senior citizens medical care and other programs as it considers beneficial to the citizens of this state.

(i) The commerce division may use the amounts allocated to it pursuant to subsection (f) of this section for one or more of the following purposes: (1) The
payment of any or all of the costs incurred in the
development, construction, reconstruction, maintenance
or repair of any project or recreational facility, as such
terms are defined in section thirteen-a, article one,
chapter five-b of this code, pursuant to the authority
granted to it under article one, chapter five-b of this
code, (2) the payment, funding or refunding of the
principal of, interest on, or redemption premiums on
any bonds, security interests or notes issued by the parks
and recreation section of the commerce division under
article one, chapter five-b of this code, or (3) the
payment of any advertising and marketing expenses for
the promotion and development of tourism or any tourist
facility or attraction in this state.

§29-22-19. Post audit of accounts and transactions of
office.

1 The legislative auditor shall conduct a yearly post
2 audit of all accounts and transactions of the state lottery
3 office. The cost of the audit shall be paid out of the state
4 lottery fund moneys designated for payment of operat-
5 ing expenses. The commission shall have an annual
6 audit performed by an independent certified public
7 accountant, and such audit may be accepted by the
8 legislative auditor in lieu of performance of its yearly
9 post audit.


1 (a) The director shall, upon the twentieth day of each
2 month, provide the joint committee on government and
3 finance of the Legislature with a report reviewing the
4 lottery operations, including, but not limited to, the
5 amount of gross sales, the amount of net profit, the types
6 of games being played, the number of licensed sales
7 agents, the names and amounts of winners and any other
8 information requested by the Legislature or by the joint
9 committee on government and finance.

10 (b) The director shall, no later than the tenth day of
11 each regular session of the Legislature, provide to the
12 Legislature, legislative auditor, governor and state
13 treasurer an annual report focused upon subjects of
14 interest concerning lottery operations, including, but not
MENTALLY ILL PERSONS

limited to, an annual financial analysis of the lottery operations, a discussion of the types of games played and revenues generated, a statement of expenditures for the last fiscal year, a summary of the benefit programs and recommendations to the Legislature.


No elected or appointed official, other than the members of the lottery commission, the director or deputy directors, may preside or appear at any lottery drawing.

CHAPTER 126

(Com. Sub. for H. B. 4102—By Delegates Pettit and Murensky)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eleven, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that a duly licensed physician treating a person subject to a competency hearing be licensed in West Virginia and providing that no person may be adjudged incompetent upon a mere written certification of incompetency if the person is denied the opportunity to cross-examine the physician making such certification.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.

§27-11-1. Appointment of committees; hearing; appointment of guardian ad litem; certification of incompetency; appeal; habeas corpus.

(a) The county commission of a person’s residence may appoint a committee for a person found to be incompetent. Any finding of incompetency under this
article shall be made separately and at a different proceeding from any finding of mental illness, mental retardation or addiction under article four or five of this chapter.

(b) Proceedings for the appointment of a committee for an alleged incompetent may be commenced by the filing of a verified petition of a person setting forth the facts showing the incompetency of an individual with the county commission. Upon receipt of a petition, the clerk of the county commission shall give notice of the hearing thereon to the individual and to the individual's spouse, or if the individual does not have a spouse, to the individual's adult next of kin: Provided, That the aforesaid clerk is not required to give notice of the hearing to the spouse or adult next of kin if he or she is the petitioner: Provided, however, That the individual shall be served with notice of the hearing by delivering to him or her, in person, written notice with a true copy of the verified petition. The notice shall be served upon the individual alleged to be incompetent at least ten days before the time of the hearing.

An individual alleged to be incompetent shall be accorded the right to subpoena witnesses, to be confronted with witnesses and the right to cross-examine witnesses which may be offered against him or her, and the county commission on or before the commencement of the hearing shall appoint a competent attorney practicing before the bar of the circuit court of the county wherein the hearing is to be held as guardian ad litem for the purpose of representing the interest of the individual throughout the proceedings under this section. Notwithstanding any requirement hereof to the contrary, the hearing may proceed without the presence of the individual alleged to be incompetent if (1) proper notice has been served upon the individual alleged to be incompetent as required herein, and (2) a duly licensed physician certifies in writing and upon affidavit that he or she has examined the individual and that the individual is physically unable to appear at the hearing or that an appearance would likely impair or endanger the health of the individual, or (3) the individual refuses
to appear, and (4) upon the specific written findings by
the commission of facts as will justify a hearing without
the presence of the individual as provided in this
subsection.

(c) A record shall be made of all proceedings either
by the court reporter for the circuit court of that county
or some other person employed by the county commis-
sion for the purpose. A transcript shall be made
available to the individual or his or her counsel within
thirty days if requested for purposes of appeal. In any
case wherein an indigent person whose incompetency is
alleged pursuant to the provisions of this section seeks
an appeal, the circuit court shall by order entered of
record authorize and direct the person making the
record of the proceeding to furnish a transcript of the
hearing, and the cost shall be paid by the county
commission from funds appropriated for this purpose.

(d) Upon completion of the hearing and upon the
evidence presented therein, the county commission may
find that (1) the individual is unable to manage his or
her business affairs, or (2) the individual is unable to
care for his or her physical well-being, or (3) both, and
is therefore incompetent, or (4) that the individual is
competent. Evidence of mere poor judgment or of
different life style shall not be competent evidence upon
which to base a finding of incompetency.

"Unable to manage one's business affairs" means the
inability to know and appreciate the nature and effect
of his or her business transactions, notwithstanding the
fact that he or she may display poor judgment.

"Unable to care for one's physical well-being" means
the substantial risk of physical harm to himself or
herself as evidenced by conduct demonstrating that he
or she is dangerous to himself or herself, notwithstanding
the fact that he or she may display poor judgment.

(e) If the county commission finds the person to be
competent, the proceedings shall be dismissed. No
appointment of a committee shall be made on evidence
which is uncorroborated by the testimony of a medical
expert or by a certified statement upon affidavit as
hereinafter provided. If the individual refuses to submit
to an examination by a physician, the circuit court may
upon petition issue a rule against the individual to show
cause why the individual should not submit to an
examination. A copy of the petition shall accompany
service of the rule and such rule shall be returnable at
a time to be fixed by the court. Any physician duly
licensed to practice medicine in this state or any state
contiguous to this state who is currently treating the
individual alleged to be incompetent may file with the
county commission his or her certified statement upon
affidavit stating that he or she is currently treating the
individual and setting forth his or her opinion of the
individual's ability to manage his or her business affairs
and care for his or her physical well-being, and stating
in detail the grounds for the opinion. The statement may
be considered by the county commission as evidence in
the case: Provided, That the circuit court upon the
petition of the attorney or guardian ad litem for the
alleged incompetent shall issue a subpoena for the
treating physician to appear as a witness at the
proceeding: Provided, however, That a certified state-
ment upon affidavit is not admissible as evidence of
incompetency under this section where

(1) The guardian ad litem or attorney for the individ-
ual makes a timely request of the commission for the
opportunity to cross-examine the treating physician who
filed the certified statement upon affidavit; and

(2) The commission requests such treating physician
to appear for cross-examination; and

(3) Such treating physician fails to appear and answer
questions under cross-examination.

(f) The extent of the committee's authority shall be
specified in the order of the county commission. No
authority of a committee shall extend beyond what is
necessary for the protection of the individual. A finding
of inability to care for one's physical well-being shall
entitle the committee to custody of the individual, except
when the individual is under a commitment order to a
mental health facility, but only to the extent as is
necessary for the protection of the individual.

(g) An individual found incompetent pursuant to
subsection (d) of this section shall have the right to an
appeal and hearing thereon in the circuit court of the
county. The judge shall hear the matter on appeal as
provided in article three, chapter fifty-eight of this code
or order a hearing de novo on the matter.

(h) The individual or any person may apply to the
county commission in the manner provided by subsec-
tion (b) of this section for termination of his or her
committee at any time and appeal from a determination
thereon in the manner provided by this section, or in the
alternative, the individual may seek such termination by
habeas corpus.

CHAPTER 127

(Com. Sub. for H. B. 4602—By Mr. Speaker, Mr. Chambers,
and Delegate Houvouras)

[Passed March 10, 1990; in effect May 1, 1990. 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; and to
amend and reenact section three, article ten of said
chapter, all relating to the certification of title tax and
the registration fee for certain classes of vehicles;
exempting certain classes of vehicles over fifty-five
thousand pounds from the certification of title tax; and
providing a new registration fee for vehicles over fifty-
five thousand pounds.

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; and that section
three, article ten of said chapter be amended and reenacted,
all to read as follows:
Article

3. Original and Renewal of registration; Issuance of Certificates of Title.

10. Fees for Registration, Licensing, Etc.

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 therefor, whether original issues or duplicates, shall not be issued or furnished by the division of motor vehicles or any other officer charged with the duty, unless the applicant therefor already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle. The application shall be upon a blank form to be furnished by the division of motor vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the division of motor vehicles may require. The application shall be signed and sworn to by the applicant.

(b) A tax is hereby imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of said motor vehicle at the time of such certification. If the vehicle is new, the actual purchase price or consideration to the purchaser thereof is the value of the vehicle; if the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase is the value thereof for the purposes of this section: Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax herein imposed has been paid by the purchaser shall be deducted from the total actual price or
consideration paid for the vehicle, whether the same be new or secondhand; if the vehicle is acquired through gift, or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer is the value thereof for the purposes of this section. No certificate of title for any vehicle shall 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 said 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, however, That the husband or wife, or the parents or children previously have paid the tax on the vehicles so transferred to the state of West Virginia: Provided further, That 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 filed bankruptcy proceedings in the United States bankruptcy court and the taxes and fees so required to be paid by the applicant have been impounded due to the bankruptcy proceedings: And provided further, 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.

The tax imposed by this section does not apply to vehicles to be registered as Class H vehicles, or Class S vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce. Nor does the tax imposed by this section apply to the titling of Class B, Class K or Class E vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C or Class L semitrailers, full trailers, pole trailers, and converter gear: Provided, That, if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and 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 must surrender to the commissioner the exempted registration, the exempted certificate of title, and pay the tax imposed by this section based upon the current market value of the vehicle: Provided, however, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B, Class K or Class E vehicles in excess of fifty-five thousand pounds and Class C or Class L semitrailers, full trailers, pole trailers and converter gear shall not subject the sale or purchase of said vehicles to the consumers sales tax. 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 shall be a charge of five dollars for each original certificate of title or duplicate certificate of title so issued: Provided further, That this state or any political subdivision thereof, or any volunteer fire department, or duly chartered rescue squad, is exempt from payment of such charge.

Such certificate is good for the life of the vehicle, so long as the same is owned or held by the original holder of such certificate, and need not be renewed annually, or any other time, except as herein provided.

If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax herein imposed previously has been paid, to the division of motor
vehicles, on that vehicle, he or she is not required to pay such tax.

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 retile 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 such person to another person and transferred back to such person.

(c) Notwithstanding any provisions of this code to the contrary, the owners of trailers, semitrailers, recreational vehicles and other vehicles not subject to the certificate of title tax prior to the enactment of this chapter are subject to the privilege tax imposed by this section: Provided, That the certification of title of any recreational vehicle owned by the applicant on the thirtieth day of June, one thousand nine hundred eighty-nine, is not subject to the tax imposed by this section: Provided, however, That mobile homes, house trailers, modular homes and similar nonmotive propelled vehicles, except recreational vehicles, 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 such vehicle is accompanied by an affidavit stating that such vehicle will be operated on a nonprofit basis and used exclusively for the transportation of mentally retarded and physically handicapped children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

(d) Any person making any affidavit required under any provision of this section, who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, is on the first offense guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five
hundred dollars or be imprisoned in the county jail for
a period not to exceed six months, or, in the discretion
of the court, both fined and imprisoned. For a second
or any subsequent conviction within five years any such
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.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3. Registration fees for vehicles equipped with
pneumatic tires.

The following registration fees for the classes indi-
cated shall be paid annually to the division for the
registration of vehicles subject to registration hereunder
when equipped with pneumatic tires:

Class A. The registration fee for all motor vehicles of
this class is as follows:

(1) For motor vehicles of a weight of three thousand
pounds or less—twenty-five dollars.

(2) For motor vehicles of a weight of three thousand
and one pounds to four thousand pounds—thirty dollars.

(3) For motor vehicles of a weight in excess of four
thousand pounds—thirty-six dollars.

(4) For motor vehicles designed as trucks with
declared gross weights of four thousand pounds or less—
twenty-five dollars.

(5) For motor vehicles designed as trucks with
declared gross weights of four thousand and one pounds
to eight thousand pounds—thirty dollars.

For the purpose of determining the weight, the actual
weight of the vehicle shall be taken: Provided, That for
vehicles owned by churches, or by trustees for churches,
which vehicles are regularly used for transporting
parishioners to and from church services, no license fee
shall be charged, but notwithstanding such exemption,
the certificate of registration and license plates shall be
obtained the same as other cards and plates under this article.

Class B, Class E and Class K. The registration fee for all motor vehicles of these three classes is as follows:

(1) For declared gross weights of eight thousand and one pounds to sixteen thousand pounds—twenty-eight dollars plus five dollars for each one thousand pounds or fraction thereof that the gross weight of such vehicle or combination of vehicles exceeds eight thousand pounds.

(2) 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 thereof that the gross weight of such vehicle or combination of vehicles exceeds sixteen thousand pounds.

(3) 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 thereof that the gross weight of such vehicle or combination of vehicles exceeds fifty-five thousand pounds.

Class C and Class L. The registration fee for all vehicles of these two classes is seventeen dollars and fifty cents except that semitrailers, full trailers, pole trailers, and converter gear registered as Class C and Class L may be registered for a period of ten years at a fee of one hundred dollars.

Class G. The registration fee for each motorcycle is eight dollars.

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, Class E and Class K reduced by the amount that the mileage of such vehicles operated in states other than West Virginia bears to the total mileage operated by such vehicles in all states under a formula to be established by the division of motor vehicles.
Class J. The registration fee for all motor vehicles of this class is eighty-five dollars. Ambulances and hearses used exclusively as such are exempt from the above special fees.

Class R. The registration fee for all vehicles of this class is twelve dollars.

Class S. The registration fee for all vehicles of this class is seventeen dollars and fifty cents.

Class T. The registration fee for all vehicles of this class is eight dollars.

Class U. The registration fee for all vehicles of this class is fifty-seven dollars and fifty cents.

Class Farm Truck. The registration fee for all motor vehicles of this class is as follows: (1) For farm trucks of declared gross weights of eight thousand and one pounds to sixteen thousand pounds—thirty dollars; (2) for farm trucks of declared gross weights of sixteen thousand and one pounds to twenty-two thousand pounds—sixty dollars; (3) for farm trucks of declared gross weights of twenty-two thousand and one pounds to twenty-eight thousand pounds—ninety dollars; (4) for farm trucks of declared gross weights of twenty-eight thousand and one pounds to thirty-four thousand pounds—one hundred fifteen dollars; (5) for farm trucks of declared gross weights of thirty-four thousand and one pounds to forty-four thousand pounds—one hundred sixty dollars; (6) for farm trucks of declared gross weights of forty-four thousand and one pounds to fifty-four thousand pounds—two hundred five dollars; and (7) for farm trucks of declared gross weights of fifty-four thousand and one pounds to sixty-four thousand pounds—two hundred fifty dollars.

CHAPTER 128

(Com. Sub. for H. B. 4458—By Delegates Seacrist and Anderson)

[Passed March 9, 1990; 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 registration plates for motor vehicles; authorizing special registration plates for members of United States Armed Forces Reserve Units, veterans, survivors of the attack on Pearl Harbor, certified paramedics, and emergency medical technicians; vehicles of the survivors of the attack on Pearl Harbor are exempt from payment of registration fees; special fees to be charged to veterans, certified paramedics, and emergency medical technicians.

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.

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

2 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, also the name of this state, which may be abbreviated, and the year number for which it is issued or the date of expiration thereof.

3 Such registration plate and the required letters and numerals thereon, except the year number for which issued or the date of expiration, shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight, said registration numbering to begin with number two.

4 The division shall not issue, permit to be issued, or distribute any special numbers except as follows:

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

(b) Upon appropriate application, there shall be
issued to the secretary of state, state superintendent of
free schools, auditor, treasurer, commissioner of agricul-
ture, 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 said judges shall
be residents of West Virginia, a special registration
plate for a motor vehicle owned by said official or
spouse, but not to exceed two plates for each such
official, which plate shall bear any combination of
letters not to exceed an amount determined by the
commissioner, and with a designation of the office and
which plate shall supersede, during his term of office
and while such motor vehicle is owned by said official
or spouse, the regular numbered plate assigned to him.

(c) Upon receipt of an application on a form pres-
ccribed 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 a motor vehicle owned
by the member or the member’s spouse, but not to
exceed one plate for each such member.

(d) Upon appropriate application, any owner of a
motor vehicle subject to Class A registration, or the
owner of a motorcycle subject to Class G registration,
under the provisions of 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
such request wherever possible and shall promulgate
appropriate rules and regulations for the orderly
distribution of such plates: Provided, That for purposes of this subdivision, such registration plates so requested and issued shall include all plates bearing the numbers two through two thousand and shall be subject to the provisions of subdivision \((k)\) of this section.

(e) 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 with an insignia designed by the commissioner of the division of motor vehicles. A special fee of five 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 such 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 shall be construed to exempt said veterans from any other provision in this chapter.

(f) 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 registration plate which bears the letters “DV” in red, and also the regular identification numerals in red.

(g) 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 bearing letters or numbers. The registration plate designed by the commissioner of motor vehicles shall denote that those individuals who are granted this special registration plate are recipients of the purple heart. All letterings as herein provided shall be in purple where practical. Further, the registration plates herein provided shall be exempt from registration fees under the provisions of this chapter.

(h) 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 designed by the commissioner of motor vehicles and shall be exempt from the payment of registration fees as required under the provisions of this chapter.

(i) Subject to rules promulgated by the commissioner, nonprofit charitable and educational organizations shall be authorized to design a logo or emblem for inclusion on a special registration plate and to market this special registration plate to organization members and the general public. Approved nonprofit organizations may accept applications for the special registration plate from the owner of motor vehicles subject to a Class A registration and payment of fees therefor under the provisions of this article and may 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:

Provided, That such rules, regulations and standards that are promulgated by the commissioner for purpose of this subdivision shall be promulgated in accordance with the provisions of chapter twenty-nine-a of this code. Nonprofit organizations seeking to market such plates shall be authorized to collect a fee for successfully processing a registration plate application and shall deposit an appropriate fee, which shall be determined by the commissioner, with the division of motor vehicles to defray the administrative costs associated with designing and manufacturing special registration plates for the organization.

(j) 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, 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 upon application, 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 an insignia designed by the commissioner of the division of motor vehicles to denote those individuals who are granted special registration plates under this article, complying with the motor vehicle laws of the state relative to registration and licensing of motor vehicles, and upon payment of the registration, license and other fees required by law, and the payment of the additional special fee herein provided, shall be issued a license plate for a private passenger car, upon which, in lieu of the registration number prescribed by law, shall be inscribed the insignia designed by the commissioner of the division of motor vehicles to denote those individuals who are granted this special registration insignia in addition to their existing registration numbers.

The special fee that shall be charged each applicant for the issuance of a license plate bearing the insignia designed by the commissioner of the division of motor vehicles to denote those individuals who are granted this special registration insignia in addition to their existing registration number, shall be five dollars, which special fee shall be in addition to all other fees required by law. This special fee is for the purpose of compensating the division of motor vehicles for additional costs and services required in the issuing of such 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.

The commissioner is authorized to prescribe proper forms to be used in making application for the special license plates authorized by this section.

(k) In addition to the regular registration fees set forth in section three, article ten of this chapter, a fee of fifteen dollars shall be paid to the division in each case in which an application for a special registration plate is made as provided in subdivisions (a), (b), (c) and (d): Provided, That nothing in this section shall be construed to require a charge for a free prisoner of war license plate authorized by other provisions of this code.

Notwithstanding the provisions of this section, or of
any other provision of this chapter, the commissioner may, in his discretion, issue a type of 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 such vehicles have been properly registered or the date of expiration of such registration. The design of such plates shall be determined by the commissioner.

Further, notwithstanding any provisions of this chapter to the contrary, any license plate issued or renewed pursuant to this chapter, which is paid for by a check that is returned for nonsufficient funds, shall be void without further notice to the applicant, and 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 129
(H. B. 4540—By Delegate Anderson)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, four, five, ten and fifteen, article six of said chapter; and to further amend said chapter by adding thereto a new article, designated article six-b, relating to motor vehicle administration; transfers of title; providing a definition of a total loss vehicle; providing for inspection of rebuilt motor vehicles by an inspector from the division of motor vehicles; setting fees; criminal penalties; licensing of wreckers/dismantlers/rebuilder; providing definitions; authorizing a special plate; setting fees; motor vehicles; licensing of license service businesses to issue temporary registration plates; requiring a bond; fees; creating a special fund; procedure for refusal to issue; form of
license certificate; certified copies; license good for one year; renewals; investigations and confidentiality; suspension and revocation; violations and criminal penalties; injunctive relief; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, four, five, ten and fifteen, article six of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article six-b, all to read as follows:

Article

4. Transfers of Title or Interest.

6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, Etc.

6B. License Services.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

1 In the event a motor vehicle is determined to be a total loss or otherwise designated as “totaled” by any insurance company or insurer, and upon payment of an agreed price as a claim settlement to any insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer shall receive the certificate of title and the vehicle. The insurance company or insurer shall within ten days surrender the certificate of title and a copy of the claim settlement to the division of motor vehicles. The division shall issue a “salvage certificate,” on a form prescribed by the commissioner, in the name of the insurance company or the insurer. Such certificate shall contain on the reverse thereof spaces for one successive assignment before a new certificate at an additional fee is required. Upon the sale of the vehicle the insurance company or insurer shall endorse the assignment of ownership on the salvage certificate and deliver it to the purchaser. The vehicle shall not be titled or registered for operation on the streets or highways of this state unless there is
compliance with subsection (b) of this section. In the event a motor vehicle is determined to be damaged in excess of seventy-five percent of its retail price as described in the national automobile dealers association official used car guide, a junk card will be issued in lieu of a salvage certificate.

(a) Any owner, who scraps, compresses, dismantles or destroys a vehicle for which a certificate of title or salvage certificate has been issued, shall, within twenty days, surrender the certificate of title or salvage certificate to the division for cancellation. Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed or destroyed, shall within twenty days surrender the certificate to the division. Should a vehicle less than eight years old be determined to be a complete fire, flood or basket, a photograph of the vehicle shall accompany the surrendered certificate: Provided, That the term "basket" means a vehicle which has been damaged more than seventy-five percent of the retail price as described in the national automobile dealers association official used car guide. If the vehicle is to be reconstructed, the owner must obtain a salvage certificate and comply with the provisions of subsection (b) of this section.

(b) If the motor vehicle is a "reconstructed vehicle" as defined in section one, article one of this chapter, it may not be titled or registered for operation until it has been inspected by an official state inspection station and by a representative of the division of motor vehicles who has been designated by the commissioner as an investigator. Following an approved inspection, an application for a new certificate of title may be submitted to the division; however, the applicant shall be required to retain all receipts for component parts, equipment and materials used in the reconstruction. The salvage certificate must also be surrendered to the division before a certificate of title may be issued.

(c) The division shall charge a fee of fifteen dollars for the issuance of each salvage certificate but shall not require the payment of the five percent privilege tax. However, upon application for a certificate of title for
a reconstructed vehicle, the division shall collect the five
percent privilege tax on the fair market value of the
vehicle as determined by the commissioner unless the
applicant is otherwise exempt from the payment of such
privilege tax. A wrecker/dismantler/rebuilder is ex-
empt from the five percent privilege tax upon titling a
reconstructed vehicle. The division shall collect a fee of
thirty-five dollars per vehicle for inspections of recon-
structed vehicles. These fees shall be deposited in a
special fund created in the state treasurer’s office and
may be expended by the division to carry out the
provisions of this article. Licensed wreckers/di-
smantler/rebuilders may charge a fee not to exceed
twenty-five dollars for all vehicles owned by private
rebidders which are inspected at the place of business
of a wrecker/dismantler/rebuilder.

(d) A certificate of title issued by the division for a
reconstructed vehicle shall contain markings in bold
print on the face of the title that it is for a reconstructed
vehicle: Provided, That if the application for a certifi-
cate of title is accompanied by a certificate of inspection
certifying that no more than two major components (as
that term is defined in section one of article six of this
chapter) were replaced, the boldface markings “recon-
structed vehicle” shall not appear on the title.

Any person who violates the provisions of this section
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than five hundred dollars
nor more than one thousand dollars, or imprisoned in
the county jail for not more than one year, or both fined
and imprisoned.

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

PART I. DEFINITIONS; LEGISLATIVE FINDINGS
AND PUBLIC POLICY.

§17A-6-1. Definitions.
§17A-6-4. Application for license certificate; insurance; bonds; investiga-
tion; information confidential.
§17A-6-5. License certificate exemption.

§17A-6-10. Fee required for license certificate; dealer special plates.

§17A-6-15. Temporary registration plates or markers.

§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 his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself 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 his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or holds himself 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 his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used house trailers, or new and/or used house trailers and trailers.

(4) "Trailer dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used trailers.

(5) "Motorcycle dealer" means every person (other than his agents and employees, if any, while acting
within the scope of their authority or employment),
37 engaged in, or who holds himself out to the public to be
38 engaged in, the business in this state of selling new
39 and/or used motorcycles.
40 (6) "Used parts dealer" means every person (other
41 than his agents and employees, if any, while acting
42 within the scope of their authority or employment),
43 engaged in, or who holds himself out to the public to be
44 engaged in, the business in this state of selling any used
45 appliance, accessory, member, portion or other part of
46 any vehicle.
47 (7) "Wrecker/dismantler/rebuilder" means every
48 person (other than his agents and employees, if any,
49 while acting within the scope of their authority or
50 employment), engaged in, or who holds himself out to
51 the public to be engaged in, the business in this state
52 of dealing in wrecked or damaged motor vehicles or
53 motor vehicle parts for the purpose of selling the parts
54 thereof or scrap therefrom or who are in the business
55 of rebuilding salvage motor vehicles for the purpose of
56 resale to the public.
57 (8) "New motor vehicles" means all motor vehicles,
58 except motorcycles and used motor vehicles, of a type
59 required to be registered under the provisions of this
60 chapter.
61 (9) "Used motor vehicles" means all motor vehicles,
62 except motorcycles, of a type required to be registered
63 under the provisions of this chapter which have been
64 sold and operated, or which have been registered or
65 titled, in this or any other state or jurisdiction.
66 (10) "House trailers" means all trailers designed or
67 intended for human occupancy and commonly referred
68 to as mobile homes or house trailers, but shall not
69 include fold down camping and travel trailers.
70 (11) "Trailers" means all types of trailers other than
71 house trailers, and shall include, but not be limited to,
72 pole trailers and semitrailers but excluding recreational
73 vehicles.
74 (12) "Sales instrument" means any document result-
(13) "Sell," "sale" or "selling" shall, in addition to the ordinary definitions of such terms, include offering for sale, soliciting sales of, negotiating for the sale of, displaying for sale, or advertising for sale, any vehicle, whether at retail, wholesale or at auction. "Selling" shall, in addition to the ordinary definition of that term, also include buying and exchanging.

(14) "Applicant" means any person making application for an original or renewal license certificate under the provisions of this article.

(15) "Licensee" means any person holding any license certificate issued under the provisions of this article.

(16) "Predecessor" means the former owner or owners or operator or operators of any new motor vehicle dealer business or used motor vehicle dealer business.

(17) "Established place of business" shall, in the case of a new motor vehicle dealer, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which is or is to be used exclusively for the purpose of selling new motor vehicles or new and used motor vehicles, which shall have space under roof for the display of at least one new motor vehicle and facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by such dealer with respect to motor vehicles sold by him, which shall be easily accessible to the public, which shall conform to all applicable laws of the state of West Virginia and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or
highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times: Provided, That the requirement of exclusive use shall be met even though (i) some new and any used motor vehicles sold or to be sold by such dealer are 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 such location is or is to be served by other facilities and space of such dealer for the servicing and repair of at least one motor vehicle, adequate and suitable as aforesaid, and each such 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; (ii) house trailers, trailers and/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 such type of vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (iii) farm machinery is sold thereat; and (iv) accessory, gasoline and oil, or storage departments are maintained thereat, if such departments are operated for the purpose of furthering and assisting in the licensed business or businesses.

(18) "Farm machinery" means all machines and tools used in the production, harvesting or care of farm products.

(19) "Established place of business" shall, in the case of a used motor vehicle dealer, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, 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 such dealer with
respect to used motor vehicles sold by him, which shall
be easily accessible to the public, shall conform to all
applicable laws of the state of West Virginia, and the
ordinances of the municipality in which it is located, if
any, which shall display thereon at least one permanent
sign, clearly visible from the principal public street or
highway nearest said location and clearly stating the
business which is or shall be conducted thereat, and
which shall have adequate facilities to keep, maintain
and preserve records, papers and documents necessary
to carry on such business and to make the same
available to inspection by the commissioner at all
reasonable times: Provided, That if a used motor vehicle
dealer has entered into a written agreement or agree-
ments 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 such servicing and repair
services and space in like manner as if said servicing
and repair facilities and space were located in or on said
dealer's place of business, then, so long as such an
agreement or agreements are in effect, it shall not be
necessary for such dealer to maintain such servicing and
repair facilities and space at his place of business in
order for such place of business to be an established
place of business as herein defined: Provided, however,
That the requirement of exclusive use shall be met even
though (i) house trailers, trailers and/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 such type of vehicle
business, which license certificate remains unexpired,
unsuspended and unrevoked; (ii) farm machinery is sold
thereat; and (iii) accessory, gasoline and oil, or storage
departments are maintained thereat, if such depart-
ments are operated for the purpose of furthering and
assisting in the licensed business or businesses.

(20) "Established place of business" shall, in the case
of a house trailer dealer, trailer dealer, recreational
vehicle dealer, motorcycle dealer, used parts dealer and
wrecker or dismantler, mean a permanent location, not
a temporary stand or other temporary quarters, owned
or leased by the licensee or applicant and actually
occupied or to be occupied by him, as the case may be,
which shall be easily accessible to the public, which
shall conform to all applicable laws of the state of West
Virginia and the ordinances of the municipality in
which it is located, if any, which shall display thereon
at least one permanent sign, clearly visible from the
principal public street or highway nearest said location
and clearly stating the business which is or shall be
conducted thereat, and which shall have adequate
facilities to keep, maintain and preserve records, papers
and documents necessary to carry on such business and
to make the same available to inspection by the
commissioner at all reasonable times.

(21) “Manufacturer” means every person engaged in
the business of reconstructing, assembling or reassem-
bling vehicles with a special type body required by the
purchaser if said vehicle is subject to the title and
registration provision of the code.

(22) “Transporter” means every person engaged in the
business of transporting vehicles to or from a manufac-
turing, assembling or distributing plant to dealers or
sales agents of a manufacturer, or purchasers.

(23) “Recreational vehicle dealer” means every person
(other than his agents and employees, if any, while
acting within the scope of their authority or employ-
ment), engaged in, or who holds himself out to the public
to be engaged in, the business in this state of selling new
and/or used recreational vehicles.

(24) “Motorboat” means any vessel propelled by an
electrical, steam, gas, diesel or other fuel propelled or
driven motor, whether or not such motor is the principal
source of propulsion, but shall 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 follow-
ing subassemblies of a motor vehicle: (i) Front clip
assembly consisting of fenders, grille, hood, bumper and
related parts; (ii) engine; (iii) transmission; (iv) rear clip
assembly consisting of quarter panels and floor panel
assembly; or (v) two or more doors.

(b) Under no circumstances whatever shall 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 shall come in possession or ownership of, or
acquire contract rights, or security interests in or to, any
vehicle or vehicles or any part thereof and shall sell such
vehicle or vehicles or any part thereof for purposes other
than engaging in and holding himself or itself out to the
public to be engaged in the business of selling vehicles
or any part thereof.

(c) It is recognized that throughout this code the term
“trailer” or “trailers” is used to include, among other
types of trailers, house trailers. It is also recognized that
throughout this code the term “trailer” or “trailers” is
seldom used to include semitrailers or pole trailers.
However, for the purposes of this article only, the term
“trailers” shall have the meaning ascribed to it in
subsection (a) of this section.

§17A-6-4. Application for license certificate; insurance;
bonds; investigation; information confidential.

(a) Application for any license certificate required by
section three of this article shall be made on such form
as may be prescribed by the commissioner. There shall
be attached to the application a certificate of insurance
certifying that the applicant has in force an insurance
policy issued by an insurance company authorized to do
business in this state insuring the applicant and any
other person, as insured, using any vehicle or vehicles
owned by the applicant with the express or implied
permission of such named insured, against loss from the
liability imposed by law for damages arising out of the
ownership, operation, maintenance or use of such vehicle
or vehicles, subject to minimum limits, exclusive of
interest and costs, with respect to each such vehicle, as
follows: Twenty thousand dollars because of bodily
injury to or death of one person in any one accident and,
subject to said limit for one person, forty thousand
dollars because of bodily injury to or death of two or
more persons in any one accident, and ten thousand
dollars because of injury to or destruction of property
of others in any one accident.

(b) In the case of an application for a license certif-
icate to engage in the business of new motor vehicle
dealer, used motor vehicle dealer or house trailer dealer,
such application shall disclose, but not be limited to, the
following:

(1) The type of business for which a license certificate
is sought;

(2) If the applicant be an individual, the full name
and address of the applicant and any trade name under
which he will engage in said business;

(3) If the applicant be a copartnership, the full name
and address of each partner therein, the name of the
copartnership, its post-office address and any trade
name under which it will engage in said business;

(4) If the applicant be a corporation, its name, the
state of its incorporation, its post-office address and the
full name and address of each officer and director
thereof;

(5) The location of each place in this state at which
the applicant will engage in said business and whether
the same is owned or leased by the applicant;

(6) Whether the applicant, any partner, officer or
director thereof has previously engaged in said business
or any other business required to be licensed under the
provisions of this article and if so, with or for whom,
at what location and for what periods of time;
(7) Whether the applicant, any partner, officer, director or employer thereof has previously applied for a license certificate under the provisions of this article or a similar license certificate in this or any other state, and if so, whether such license certificate was issued or refused, and, if issued, whether it was ever suspended or revoked;

(8) A statement of previous general business experience and past history of the applicant; and

(9) Such other information as the commissioner may reasonably require which may include information relating to any contracts, agreements or understandings between the applicant and other persons respecting the transaction of said business, and any criminal record of the applicant if an individual, or of each partner if a copartnership, or of each officer and director, if a corporation.

(c) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, such application shall, in addition to the matters outlined in subsection (b) of this section disclose:

(1) The make or makes of new motor vehicles which the applicant will offer for sale in this state during the ensuing fiscal year; and

(2) The exact number of new motor vehicles, if any, sold at retail in this state by such applicant or his predecessor, if any, during the preceding fiscal year, and if no new motor vehicles were sold at retail in this state by such applicant or his predecessor, if any, during the preceding fiscal year, the number of new motor vehicles the applicant reasonably expects to sell at retail in this state during the ensuing fiscal year.

(d) In the case of an application for a license certificate to engage in the business of used motor vehicle dealer, such application shall in addition to the matters outlined in subsection (b) of this section, disclose the exact number of used motor vehicles, if any, sold at retail in this state by such applicant or his predecessor,
if any, during the preceding fiscal year, and if no used
motor vehicles were sold at retail in this state by such
applicant or his predecessor, if any, during the preceding
fiscal year, the number of used motor vehicles the
applicant reasonably expects to sell at retail in this state
during the ensuing fiscal year.

(e) In the case of an application for a license certificate
to engage in the business of trailer dealer,
recreational vehicle dealer, motorcycle dealer, used
parts dealer, or wrecker/dismantler/rebuilder, such
application shall disclose such information as the
commissioner may reasonably require.

(f) Such application shall be verified by the oath or
affirmation of the applicant, if an individual, or if the
applicant is a copartnership or corporation, by a partner
or officer thereof, as the case may be. Such application
must be accompanied by a bond of the applicant in the
penal sum of two thousand dollars, in such form as may
be prescribed by the commissioner, conditioned that the
applicant will not in the conduct of his business practice
any fraud which, or make any fraudulent representation
which, shall cause a financial loss to any purchaser,
seller or financial institution or agency, or the state of
West Virginia, with a corporate surety thereon autho-
rized to do business in this state, which bond shall be
effective as of the date on which the license certificate
sought is issued.

(g) Upon receipt of any such fully completed applica-
tion, together with any bond required as aforesaid, the
certificate of insurance as aforesaid and the appropriate
fee as hereinafter provided in section ten of this article,
the commissioner may conduct such investigation, as he
deems necessary to determine the accuracy of any
statements contained in such application and the
existence of any other facts which he deems relevant in
considering such application. To facilitate such investi-
gation, the commissioner may withhold issuance or
refusal of the license certificate for a period not to
exceed twenty days.

(h) Any application for a license certificate under the
provisions of this article and any information submitted therewith shall be confidential for the use of the division. No person shall divulge any information contained in any such application or any information submitted therewith except in response to a valid subpoena or subpoena duces tecum issued pursuant to law.

§17A-6-5. License certificate exemption.

Any new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, or wrecker/dismantler/rebuilder receiving a vehicle in trade of a type other than that he is licensed to sell hereunder may sell such vehicle without obtaining a license certificate to engage in the business of selling vehicles of such type and without being considered to be a dealer in vehicles of such type.

PART III. FEES AND DEALER SPECIAL PLATES GENERALLY.

§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, recreational vehicle dealer, motorcycle dealer, or wrecker/dismantler/rebuilder shall be two hundred and 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 shall entitle 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 shall be one hundred dollars. This fee shall also entitle such licensee to one dealer's special plate which shall be known as a Class D special plate. Up to nine additional Class D special plates shall be
issued to any such 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
additional Class D special plate. Any such licensee who
obtains a total of ten Class D special plates as aforesaid
shall be entitled to receive additional Class D special
plates on a formula basis, that is, one additional Class
D special plate per twenty new motor vehicles sold at
retail in this state by such licensee or his 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 such additional Class D special plate: Provided,
That in the case of a licensee who did not own or operate
such business during such preceding fiscal year and who
has no predecessor who owned or operated such business
during the preceding fiscal year, additional Class D
special plates shall be issued, for the ensuing fiscal year
only, on a formula basis of one additional Class D special
plate per twenty new motor vehicles which such licensee
estimates on his application for his license certificate he
will sell at retail in this state during said ensuing fiscal
year. Any such licensee may obtain Class D special
plates in addition to the ten plates authorized above and
any authorized on a formula basis, but the cost of each
such Class D special plate shall be thirty dollars.

(c) The annual renewal fee required for a license
certificate to engage in the business of used motor
vehicle dealer shall be one hundred dollars. This fee
shall also entitle such licensee to one dealer's special
plate which shall be known as a Class D-U/C special
plate. Up to four additional Class D-U/C special plates
shall be issued to any such 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 additional Class D-U/C special plate. Any such
licensee who obtains a total of five Class D-U/C special
plates as aforesaid shall be 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 thirty used
motor vehicles sold at retail in this state by such licensee
or his 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 such additional Class D-U/C special plate: Provided, That in the case of a licensee who did not own or operate such business during such preceding fiscal year and who has no predecessor who owned or operated such business during the preceding fiscal year, additional Class D-U/C special plates shall be issued, for the ensuing fiscal year only, on a formula basis of one additional Class D-U/C special plate per thirty used motor vehicles which such licensee estimates on his application for his license certificate he will sell at retail in this state during said ensuing fiscal year. Any such licensee may obtain Class D-U/C special plates in addition to the five plates authorized above and any authorized on a formula basis, but the cost of each such Class D-U/C special plate shall be thirty dollars.

(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, shall be twenty-five dollars. This fee shall also entitle such 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 such 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 shall be one hundred dollars. This fee shall also entitle such 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 such 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 such 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 shall be ten dollars. This fee shall also entitle such
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 such 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 such additional Class F special plate.

(g) The annual renewal fee required for a license certificate to engage in the business of wrecker/dismantler/rebuilder, shall be fifteen dollars. Upon payment of the fee for said license certificate, a licensee shall be entitled to up to four special license plates which shall be known as Class WD special plates. Such plates shall be issued to any such 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 such plate. Such 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-6-15. Temporary registration plates or markers.

(a) In order to permit a vehicle which is sold to a purchaser by a dealer to be operated on the streets and highways pending receipt of the annual registration plate from the division for such vehicle, the commissioner may, subject to the limitations and conditions hereinafter set forth, deliver temporary vehicle registration plates or markers to dealers who in turn may, subject to the limitations and conditions hereinafter set forth, issue the same to purchasers of vehicles, but such purchasers must comply with the pertinent provisions of this section.
(b) Application by a dealer to the commissioner for such temporary registration plates or markers shall be made on the form prescribed and furnished by the commissioner for such purpose and shall be accompanied by a fee of three dollars for each such temporary registration plate or marker. No refund or credit of fees paid by dealers to the commissioner for temporary registration plates or markers shall be allowed, except that in the event the commissioner discontinues the issuance of such temporary plates or markers, dealers returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit thereof. No temporary registration plates or markers shall be delivered by the commissioner to any dealer in house trailers only, and no such temporary plates or markers shall be issued for or used on any house trailer for any purpose.

(c) Every dealer who has made application for and received temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to him, a record of all temporary registration plates or markers issued by him, and a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers which the commissioner may require. Each such record shall be kept for a period of at least three years from the date of the making thereof. Every dealer who issues a temporary registration plate or marker shall, within five working days after he issues such plate or marker, send to the division a copy of the temporary registration plate or marker certificate properly executed by such dealer and the purchaser. No temporary registration plates or markers may be delivered to any dealer until such dealer has fully accounted to the commissioner for the temporary registration plates or markers last delivered to such dealer, by showing the number issued to purchasers by such dealer and any on hand.

(d) A dealer shall not issue, assign, transfer or deliver a temporary registration plate or marker to anyone other than the bona fide purchaser of the vehicle to be
registered; nor shall a dealer issue a temporary
registration plate or marker to anyone possessed of an
annual registration plate for a vehicle which has been
sold or exchanged, except a dealer may issue a tempor-
ary registration plate or marker to the bona fide
purchaser of a vehicle to be registered who possesses an
annual registration plate of a different class and makes
application to the division to exchange such annual
registration plate of a different class in accordance with
the provisions of section one, article four of this chapter;
nor shall a dealer lend to anyone, or use on any vehicle
which he may own, a temporary registration plate or
marker. It shall be unlawful for any dealer to issue any
temporary registration plate or marker knowingly
containing any misstatement of fact, or knowingly to
insert any false information upon the face thereof.

(e) Every dealer who issues temporary registration
plates or markers shall affix or insert clearly and
indelibly on the face of each temporary registration
plate or marker the date of issuance and expiration
thereof, and the make and motor or serial number of the
vehicle for which issued.

(f) If the commissioner finds that the provisions of this
section or his directions are not being complied with by
a dealer, he may suspend the right of such dealer to
issue temporary registration plates or markers.

(g) Every person to whom a temporary registration
plate or marker has been issued shall permanently
destroy such temporary registration plate or marker
immediately upon receiving the annual registration
plate for such vehicle from the division: Provided, That
if the annual registration plate is not received within
sixty days of the issuance of the temporary registration
plate or marker, the owner shall, notwithstanding the
fact that the annual registration plate has not been
received, immediately and permanently destroy the
temporary registration plate or marker: Provided,
however, That not more than one temporary registration
plate or marker shall be issued to the same bona fide
purchaser for the same vehicle.
(h) A temporary registration plate or marker shall expire and become void upon the receipt of the annual registration plate from the division or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of sixty days from the date of issuance, depending upon whichever event shall first occur.

(i) For the purpose of this section, the term “dealer” includes a wrecker/dismantler/rebuilder.

ARTICLE 6B. LICENSE SERVICES.

§17A-6B-1. License certificate required; application.
§17A-6B-2. Applicant must be bonded.
§17A-6B-3. Fee required for license certificate; special fund created.
§17A-6B-4. Investigation prior to issuance of license certificate; information confidential.
§17A-6B-5. Refusal of license certificate.
§17A-6B-6. When application to be made; expiration of license certificate; renewal.
§17A-6B-7. Form and display of license certificate; certified copies of license.
§17A-6B-8. Changes in business; action required.
§17A-6B-9. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers.
§17A-6B-10. Temporary registration plates or markers.
§17A-6B-11. Inspections; violations and penalties.
§17A-6B-12. Injunctive relief.

§17A-6B-1. License certificate required; application.

No person shall engage in the license service business in West Virginia without a license certificate. For purposes of this article, the term “license service or services” shall mean any person processing division of motor vehicle documents for compensation when such service or services are offered to the general public.

Application for a license certificate shall be made on a form prescribed by the commissioner and shall disclose such information the commissioner requires. Such application shall be verified by an oath or affirmation of the applicant, if an individual, or if the applicant is a copartnership or corporation, by a partner or officer thereof.
§17A-6B-2. Applicant must be bonded.

An application for a license certificate must be accompanied by a bond in the penal sum of twenty-five thousand dollars and have a corporate surety authorized to do business in this state, to ensure that the applicant will not, in the conduct of his or her business, make any fraudulent representation which shall cause a financial loss to any purchaser, seller, financial institution, agency, or the state of West Virginia. The bond shall be effective on the date the license certificate is issued.

A licensee shall keep the bond in full force and effect at all times. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety on such bond shall have the right to cancel such bond upon giving thirty days notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation.

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

(a) The initial application fee for a certificate to engage in the license service business is twenty-five dollars. The renewal fee for such certificate is twenty-five dollars.

(b) There is hereby created in the treasury a special fund, named the "motor vehicle license service administration fund," into which shall be paid all of the initial licensing fees, the renewal licensing fees, and certified copies fees. The commissioner of motor vehicles shall use the moneys in this account to administer and enforce the provisions of this article.

§17A-6B-4. Investigation prior to issuance of license certificate; information confidential.

Upon receipt of a completed application, the required bond, and the application fee, the commissioner may conduct such investigation, as necessary, to determine the accuracy of any statements contained in the application and the existence of any other facts relevant
in considering such application. To facilitate such investigation, the commissioner may withhold issuance or refusal of the license certificate for a period not to exceed twenty days.

Any application for a license certificate under the provisions of this article and any information submitted therewith shall be confidential for the use of the division. No person shall divulge any information contained in any application or any information submitted therewith, except in response to a valid subpoena or subpoena duces tecum issued pursuant to law.

§17A-6B-5. Refusal of license certificate.

If the commissioner finds that the applicant:

1. Has failed to furnish the required bond;
2. Has knowingly made a false statement of a material fact in the application;
3. Has habitually defaulted on financial obligations;
4. Has been convicted of a felony within five years immediately preceding receipt of the application by the commissioner;
5. So far as can be ascertained, has not complied with and will not comply with the registration and title laws of this state;
6. Has been guilty of any fraudulent act in connection with the business of licensing service; or
7. 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.

Then, upon the basis of the application, such findings, and all other information, the commissioner shall make and enter an order denying the application for a license certificate, which denial is final and conclusive unless an appeal is taken. Otherwise, the commissioner shall issue to the applicant the license certificate which shall entitle the licensee to engage in the license service business.
§17A-6B-6. When application to be made; expiration of license certificate; renewal.

(a) The initial application for a license certificate to engage in a license service business shall be made thirty days prior to the first day of January, one thousand nine hundred ninety-one. This license shall be valid for one year.

(b) Any initial application made after the first day of January, one thousand nine hundred ninety-one, and any year thereafter, shall expire on the thirty-first day of December of that year.

(c) A license certificate may be renewed by paying the renewal fee and after review by the commissioner.

(d) A license certificate issued in accordance with the provisions of this article shall not be transferable.

§17A-6B-7. Form and display of license certificate; certified copies of license.

(a) The commissioner shall prescribe the form of the license certificate for a license service business. Each license certificate shall have printed thereon the seal of the division, the location of each place of business of the licensee, the year for which the license is issued, the serial number, and such other information the commissioner may prescribe. The license certificate shall be delivered or mailed to the licensee.

(b) When a licensee conducts his or her licensed business at more than one location, he or she shall, upon application therefor, obtain from the commissioner, for each such place of business, one certified copy of the license certificate. A fee of one dollar shall be paid for each such certified copy. Each licensee shall keep his or her license certificate or certified copy thereof conspicuously posted at each place of business.

(c) In the event of the loss or destruction of a license certificate or a certified copy thereof, the licensee shall immediately make application for a certified copy of the license certificate. A fee of one dollar shall be required for any such certified copy.
§17A-6B-8. Changes in business; action required.

Every license service business shall notify the commissioner within sixty days from the date on which any of the following changes in the business occur:

1. A change of the location of any place of business;
2. A change of the name or trade name under which the licensee engages or will engage in the business;
3. The death of the licensee or any partner or partners thereof;
4. A change in any partners, officers or directors;
5. A change in ownership of the business;
6. A change in the type of legal entity by and through which the licensee engages or will engage in the business; or
7. The appointment of any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, master or receiver.

When any change specified in subdivision (1), (2), (3), (4), (5) or (6) occurs, an application for a new license certificate shall immediately be filed with the commissioner: Provided, That when a subdivision (3) change is involved, an application for a new license certificate need not be filed during the balance of the license year if a member of the family of such deceased person succeeds to the interest in the business. Upon receipt and review of the application, a new license certificate shall be issued incorporating the changes. No additional fee for the balance of the license year shall be required for the issuance of any new license certificate issued as a result of any change specified in this section.

No new license certificate shall be required for any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, receiver or master, appointed pursuant to law, who shall take charge of or operate such business for the purpose of winding up the affairs of such business or protecting the interests of the creditors of such business.
§17A-6B-9. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers.

1 The commissioner may conduct an investigation to determine whether any provisions of this chapter have been violated by a licensee. Any investigation shall be kept in strictest confidence by the commissioner, the division, the licensee, any complainant and all other persons, unless and until the commissioner suspends or revokes the license certificate of the licensee involved.

(a) The commissioner may suspend or revoke a license certificate if the commissioner finds that the licensee:

(1) Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and the giving of notices of transfers;

(2) Has failed or refused to comply with the provisions and requirements of this article, and the promulgated rules and regulations authorized in section nine, article two of this chapter which were implemented by the commissioner, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to enforce the provisions of this article; or

(b) The commissioner shall suspend or revoke a license certificate if the commissioner finds that the licensee:

(1) Has knowingly made a false statement of a material fact in his or her application for the license certificate then issued and outstanding;

(2) Has habitually defaulted on financial obligations;

(3) Has been guilty of any fraudulent act in connection with the license service business;

(4) Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;
(5) Has committed fraud in the registration of a vehicle;
(6) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;
(7) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular, relating to the conduct of the licensed business;
(8) Has a license certificate to which he is not lawfully entitled; or
(9) The existence of any other ground upon which the license certificate could have been refused, or any ground which would be cause for refusing a license certificate to such licensee were he then applying for the same.

(c) Whenever a licensee fails or refuses to keep the bond required by section two of this article in full force and effect, the license certificate of such licensee shall automatically be suspended unless and until the required bond is furnished to the commissioner, in which event the suspension shall be vacated.

(d) Whenever the commissioner shall refuse to issue a license certificate, or shall suspend or revoke a license certificate, or shall suspend the right of a licensee to issue temporary plates or markers under the provisions of section fifteen, article six of this chapter, he or she shall make and enter an order to that effect and shall cause a copy of such order to be served in person or by certified mail, return receipt requested, on the applicant or licensee, as the case may be.

(e) Suspensions hereunder shall continue until the cause therefor has been eliminated or corrected. Whenever a license certificate and the right of a licensee to issue temporary registration plates or markers is suspended or revoked, the commissioner shall, in the order of suspension or revocation, direct the licensee to return to the division his or her license certificate and any temporary registration plates or markers still in the
licensee's possession and issued in conjunction with the issuance of such license service certificate. It is the duty of the licensee to comply with the order. Whenever a licensee fails or refuses to comply with any order herein specified, the commissioner shall proceed as provided in section seven, article nine of this chapter.

(f) Any applicant whose request for a license certificate is refused, and any licensee whose license certificate is suspended or revoked, may appeal such order in accordance with the procedures set by the commissioner.

(g) Revocation of a license certificate shall not preclude application for a new license certificate, which application shall be processed in the same manner. The license certificate shall be issued or refused on the same grounds as any other application for a license certificate, except that any previous suspension and revocation may be considered in deciding whether to issue or refuse such license certificate.

§17A-6B-10. Temporary registration plates or markers.

(a) In order to permit a vehicle which is to be titled and registered to be operated on the streets and highways pending receipt of the annual registration plate from the division for such vehicle, the commissioner may, subject to the limitations and conditions hereinafter set forth, deliver temporary vehicle registration plates or markers to persons engaged in license service businesses who in turn may, subject to the limitations and conditions hereinafter set forth, issue the same to applicants for title and registration of vehicles, but such applicants must comply with the pertinent provisions of this section.

(b) Application by a license service business to the commissioner for such temporary registration plates or markers shall be made on the form prescribed and furnished by the commissioner for such purpose and shall be accompanied by a fee of three dollars for each such temporary registration plate or marker. No refund or credit of fees paid by license services to the commissioner for temporary registration plates or markers
shall be allowed, except that in the event the commissioner discontinues the issuance of such temporary plates or markers, license services returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit thereof.

(c) Every license service who has made application for and received temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to the licensee, a record of all temporary registration plates or markers issued, and a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers which the commissioner may require. Each such record shall be kept for a period of at least three years from the date of the making thereof.

Every licensee who issues a temporary registration plate or marker shall, within five working days after the issuance of such plate or marker, send to the division a copy of the temporary registration plate or marker certificate properly executed by the license service and the purchaser.

No temporary registration plates or markers may be delivered to any license service until such license service has fully accounted to the commissioner for the temporary registration plates or markers last delivered to such license service, by showing the number issued to purchasers by such license service and any on hand.

(d) A license service shall not issue, assign, or deliver a temporary registration plate or marker to anyone other than the bona fide applicant for title and registration of the vehicle to be registered. Not more than one temporary registration plate or marker shall be issued to the same bona fide applicant for the same vehicle. A license service shall not issue a temporary registration plate or marker to anyone possessed of an annual registration plate for a vehicle which has been sold or exchanged, except a license service may issue a temporary registration plate or marker to the bona fide
applicant of a vehicle to be registered who possesses an annual registration plate of a different class and makes application to the division to exchange such annual registration plate of a different class in accordance with the provisions of section one, article four of this chapter. A license service shall not lend to anyone, or use on any vehicle which he may own, a temporary registration plate or marker.

It is unlawful for any license service to issue any temporary registration plate or marker which contains a misstatement of fact or false information.

No license service shall issue, assign or deliver a temporary registration plate or marker to anyone unless and until the license service has physical possession of the application and appropriate fees and taxes of the vehicle to be titled and registered. Such application, fees, and taxes shall be postmarked to the issuing agency or submitted to the division of motor vehicles within forty-eight hours after issuance of the temporary plate or marker.

(e) Every license service who issues temporary registration plates or markers shall affix or insert clearly and indelibly on the face of each temporary registration plate or marker the date of issuance and expiration thereof, and the make, model, and serial number of the vehicle for which issued.

(f) If the commissioner finds that the provisions of this section or his or her directions are not being complied with by a license service, he or she may suspend the right of such license service to issue temporary registration plates or markers.

(g) A temporary registration plate or marker shall expire upon the receipt of the annual registration plate from the division, or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of sixty days from the date of issuance, depending upon which event occurs first.

(h) A license service may charge a fee not to exceed five dollars for issuing a temporary registration plate or marker.
§17A-6B-11. Inspections; violations and penalties.

(a) The commissioner and all law-enforcement officers of the state, acting at the commissioner's request, are hereby authorized to inspect the place of business and pertinent records, documents and papers of any person required to be licensed under the provisions of this article to the extent deemed reasonably necessary to determine compliance with and violations of this article. For the purpose of making any such inspection, the commissioner and such law-enforcement officers are authorized, at reasonable times, to enter in and upon any such place of business.

(b) Any person who shall violate any provision of this article or any final order of the commissioner or board hereunder shall be guilty of a misdemeanor, and the provisions of article eleven of this chapter governing violations of this chapter generally shall be fully applicable thereto.

§17A-6B-12. Injunctive relief.

(a) Whenever it appears to the commissioner that any person or licensee has violated any provision of this article or any final order of the commissioner, the commissioner may petition, in the name of the state, the circuit court of the county in which the violation or violations occurred, for an injunction against such person or licensee. A violation or violations resulting in prosecution or conviction under the provisions of article eleven of this chapter shall not prohibit injunctive relief.

The circuit court may, by mandatory or prohibitory injunction, compel compliance with the provisions of this article and all final orders of the commissioner. The court may also issue temporary injunctions.

(b) The judgment by the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

1 The commissioner shall promulgate rules in accordance with chapter twenty-nine-a of this code in order to effect the provisions of this article.

CHAPTER 130
(H. B. 4541—By Delegates D. Cook and Pitrolo)

[Passed February 28, 1990; 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 one-a, relating to motor vehicle administration; providing a definition of automobile broker; making it unlawful to be an automobile broker; and providing criminal penalties.

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 one-a, to read as follows:

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

§17A-6-1a. Unlawful to be an automobile broker; definition; criminal penalties.

1 No person, except as provided below, shall arrange or offer to arrange for a fee, commission, or other valuable consideration, a transaction involving the sale of more than two new or used motor vehicles per calendar year. Such person shall be deemed an automobile broker: Provided, That a licensed new or used motor vehicle dealer in the state of West Virginia or an agent or employee of such dealer; an authorized distributor or an agent or employee of such distributor; an authorized automobile auction held by a licensed auctioneer; any person who sells a motor vehicle pursuant to a pledge
12 of security and lien as established in article four-a of this
13 chapter; and an individual or corporation, including
14 banks and financial institutions, who is the owner of the
15 new or used motor vehicle titled in the state of West
16 Virginia which is the object of a sale are not automobile
17 brokers.
18 Any person violating the provisions of this section is
19 guilty of a misdemeanor, and, upon conviction thereof,
20 shall be fined not more than one thousand dollars, or
21 imprisoned in the county jail not more than sixty days,
22 or both fined and imprisoned.

CHAPTER 131
(H. B. 4542—By Delegates Anderson and Peddicord)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six-a, 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 eight-a, relating to compensation to
motor vehicle dealers for service rendered on warranty
and factory recall work; compensation from manufac-
turers to dealers for warranty and recall work must be
the same as the amount charged by the dealer for
nonwarranty and nonrecall work, and cannot be based
on a flat rate figure; time limit for compensation by
manufacturer; dealer’s limited responsibility for pro-
duct liability.

Be it enacted by the Legislature of West Virginia:

That article six-a, 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 eight-a, to read as follows:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS,
WHOLESALERS AND MANUFACTURERS.

§17A-6A-8a. Compensation to dealers for service
rendered.

1 Every motor vehicle manufacturer, distributor or
wholesaler, factory branch or distributor branch, or
officer, agent or representative thereof, shall specify in
writing to each of its motor vehicle dealers, the dealer's
obligation for delivery, preparation, warranty, and
factory recall services on its products, shall compensate
the motor vehicle dealer for warranty and factory recall
service required of the dealer by the manufacturer,
distributor or wholesaler, factory branch or distributor
branch, or officer, agent or representative thereof, and
shall provide the dealer the schedule of compensation to
be paid such dealer for parts, work, and service in
connection with warranty and recall services, and the
time allowance for the performance of such work and
service.

In no event shall such schedule of compensation fail
to compensate such dealers for the work and services
they are required to perform in connection with the
dealer's delivery and preparation obligations, or fail to
adequately and fairly compensate such dealers for labor,
parts and other expenses incurred by such dealer to
perform under and comply with manufacturer's war-
ranty agreements and factory recalls. In no event shall
any manufacturer, distributor or wholesaler, or repre-
sentative thereof, pay its dealers an amount of money
for warranty or recall work that is less than that
charged by the dealer to the retail customers of the
dealer for nonwarranty and nonrecall work of the like
kind; and, in no event shall any manufacturer, distrib-
utor or wholesaler, or representative thereof, compens-
sate for warranty and recall work based on a flat rate
figure that is less than what the dealer charges for retail
work.

All claims made by motor vehicle dealers pursuant to
this section for compensation for delivery, preparation,
warranty and recall work including labor, parts and
other expenses, shall be paid by the manufacturer
within thirty days after approval and shall be approved
or disapproved by the manufacturer within thirty days
after receipt. When any claim is disapproved, the dealer
shall be notified in writing of the grounds for disappro-
val. No claim which has been approved and paid may
be charged back to the dealer unless it can be shown
that the claim was false or fraudulent, that the repairs
were not properly made or were unnecessary to correct
the defective condition, or the dealer failed to reasonably
substantiate the claim in accordance with the written
requirements of the manufacturer or distributor in
effect at the time the claim arose.

Notwithstanding the terms of a franchise agreement
or provision of law in conflict with this section, the
dealer's delivery, preparation, warranty and recall
obligations shall constitute the dealer's sole responsibil-
ity for product liability as between the dealer and
manufacturer, and, except for a loss caused by the
dealer's failure to adhere to these obligations, a loss
caued by the dealer's negligence or intentional miscon-
duct, or a loss caused by the dealer's modification of a
product without manufacturer authorization, the manu-
facturer shall reimburse the dealer for all loss incurred
by the dealer, including legal fees, court costs, and
damages, as a result of the dealer having been named
a party in a product liability action.

CHAPTER 132
(Com. Sub. for H. B. 2159—By Delegate Given)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article eight,
chapter seventeen-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to special antitheft laws; defining the felony offense of
theft of a rented or leased vehicle and establishing the
penalty therefor.

Be it enacted by the Legislature of West Virginia:

That section nine, 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-8-9. Theft of a rental vehicle; penalty.

(a) A person is guilty of theft of a rental vehicle when:

(1) Such person, under the terms of a written rental or lease agreement, obtains a motor vehicle and, in so doing, makes a false or fraudulent representation or utilizes a false pretense or personation, trick, artifice or device; and

(2) Such person thereafter possesses such motor vehicle with the intent to permanently deprive the owner of such motor vehicle of his property.

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

(c) For purposes of this section, the making of a false or fraudulent representation or the utilization of a false pretense or personation, trick, artifice or device shall include, but not be limited to, a false representation as to name, residence, employment, or operator’s license.

CHAPTER 133
(H. B. 4843—By Delegates Pitrolo and Ferrell)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight, 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 thirteen, relating to special antitheft laws; defining the felony offense of theft of a motor vehicle offered for sale which had been obtained for temporary use for demonstration purposes; and establishing the penalty therefor.

Be it enacted by the Legislature of West Virginia:

That article eight, 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 thirteen, to read as follows:

ARTICLE 8. SPECIAL ANTITHEFT LAWS.

§17A-8-13. Theft of a motor vehicle offered for sale which had been obtained for temporary use for demonstration purposes; penalty.

(a) A person is guilty of theft of a motor vehicle when:

(1) Such person, under the terms of an oral agreement, obtains, for demonstration purposes, the temporary use of a motor vehicle offered for sale and, in so doing, makes a false or fraudulent representation or utilizes a false pretense or personation, trick, artifice or device; and

(2) Such person thereafter possesses such motor vehicle with the intent to permanently deprive the owner of such motor vehicle of his property.

(b) Any person who violates the provisions of this section is 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 the county jail not more than one year and shall be fined not more than five hundred dollars.

(c) For purposes of this section, the making of a false or fraudulent representation or the utilization of a false pretense or personation, trick, artifice or device shall include, but not be limited to, a false representation as to name, residence, employment, or operator's license.

CHAPTER 134

(S. B. 550—By Senators Craigo, Dittmar and Blatnik)

[Passed March 9, 1990: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, 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 three-b; to amend and reenact section one, article
one, and sections one, five, eight and twelve, article two, chapter seventeen-b of said code; to further amend said chapter seventeen-b by adding thereto a new article, designated article one-d; and to further amend article two of said chapter seventeen-b by adding thereto three new sections, designated sections seven-b, seven-c and fifteen, all relating to motorcycle safety; establishing a motorcycle safety fee; providing a definition of motorcycle; providing a definition of driver and driver license; providing for motorcycle education; establishing motorcycle education program; providing for rider training; setting forth instructor training and education; setting forth program implementation; providing for exemption from motorcycle examination; establishing motorcycle safety fund; providing division of motor vehicles with authority for regulations; establishing effective date; establishing motorcycle driver license; establishing qualifications and fee for issuance of driving instruction permits to fifteen year olds; establishing motorcycle instruction permit; providing for separate examination for motorcycle license; establishing motorcycle license examination fund; providing for motorcycle license and endorsement fee; providing division of motor vehicles and department of public safety with authority to promulgate rules.

Be it enacted by the Legislature of West Virginia:

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

Chapter
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
17B. Motor Vehicle Driver Licenses.
CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3b. Motorcycle safety fee.

Upon the annual registration of any motorcycle, the division shall collect a four dollar motorcycle safety fee in addition to the registration fee specified in section three of this article. The division shall deposit one half of the motorcycle safety fee into the state treasury and credit the moneys to the motorcycle safety fund. The division shall deposit the remaining one half of the motorcycle safety fee into the state treasury and credit the moneys collected to the motorcycle license examination fund established in section seven-c, article two, chapter seventeen-b of this code.

CHAPTER 17B. MOTOR VEHICLE DRIVER LICENSES.

Article
1. Words and Phrases Defined.
   1D. Motorcycle Safety Education.
2. Issuance of License, Expiration and Renewal.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17B-1-1. Definitions.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this article:

(a) Vehicle.—Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks;

(b) Motor vehicle.—Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails;

(c) Motorcycle.—Every motor vehicle having a seat or
saddle for the use of the rider and designed to travel
on not more than three wheels in contact with the
ground, but excluding a farm tractor as defined herein,
a moped as defined in section five-a, article one, chapter
seventeen-c, a snowmobile as defined in section one-mm,
an all-terrain
 vehicle as defined in section one-ii, article one, chapter

(d) Farm tractor.—Every motor vehicle designed and
used primarily as a farm implement for drawing plows,
mowing machines, and other implements of husbandry;

(e) School bus.—Every motor vehicle owned by a
public governmental agency and operated for the
transportation of children to or from school or privately
owned and operated for compensation for the transpor-
tation of children to or from school;

(f) Person.—Every natural person, firm, copartner-
ship, association or corporation;

(g) Operator.—Every person, other than a chauffeur,
who drives or is in actual physical control of a motor
vehicle upon a highway or who is exercising control over
or steering a vehicle being towed by a motor vehicle;

(h) Chauffeur.—Every person who is employed by
another for the principal purpose of driving a motor
vehicle and every person who drives a school bus
transporting school children or any motor vehicle when
in use for the transportation of persons or property for
compensation;

(i) Driver.—Means any person who drives, operates or
is in physical control of a motor vehicle, in any place
open to the general public for purposes of vehicular
traffic, or who is required to hold a driver license;

(j) Driver License.—Means any permit or license
issued by this state to a person which authorizes the
person to drive a motor vehicle of a specific class or
classes subject to any restriction or endorsement
contained thereon;

(k) Owner.—A person who holds the legal title of a
vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter;

(l) Nonresident.—Every person who is not a resident of this state;

(m) Street or highway.—The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(n) Commissioner.—The commissioner of motor vehicles of this state;

(o) Department.—The department of motor vehicles of this state acting directly or through its duly authorized officers or agents;

(p) Suspension.—Suspension means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of such suspension;

(q) Revocation.—Revocation means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the division after the expiration of at least one year after the date of revocation, except as otherwise provided in section two, article five-a, chapter seventeen-c of this code;

(r) Cancellation.—Cancellation means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to such license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation.
ARTICLE 1D. MOTORCYCLE SAFETY EDUCATION.

§17B-1D-1. Legislative findings.

The Legislature hereby finds and declares that:

(a) Motorcycles account for approximately three percent of the state's registered motor vehicles but are involved in over six percent of the state's motor vehicle fatalities.

(b) In terms of fatalities per vehicle mile traveled, the state's motorcyclists face about ten times the risk of passenger car occupants.

(c) Lack of proper riding skills have been shown to be largely responsible for the motorcycle fatality problem.

(d) It is therefore the purpose of this article to provide for a motorcycle safety education program in this state.

§17B-1D-2. Program established.

(a) The West Virginia motorcycle safety education program is hereby established within the division to be administered by the commissioner. The program shall include rider training courses and instructor training courses. It may also include efforts to enhance public motorcycle safety awareness, alcohol and drug effects awareness for motorcyclists, driver improvement efforts, licensing improvement efforts, program promotion and other efforts to enhance motorcycle safety through education.

(b) The commissioner shall appoint a program coordinator who shall oversee and direct the program, and conduct an annual evaluation.
§17B-1D-3. Rider training.

(a) The division shall establish standards for the rider training course designed to develop and instill the knowledge, attitudes, habits and skills necessary for safe operation of a motorcycle.

(b) Rider training courses shall be open to all residents of the state who are eligible for a motorcycle learner's permit. An adequate number of rider training courses shall be provided to meet the reasonably anticipated needs of all persons in the state who are eligible and who desire to participate in the program. Program delivery may be phased in over a reasonable period of time.

(c) The division shall issue certificates of completion in the manner and form prescribed by the commissioner to persons who satisfactorily complete the requirements of the course.

§17B-1D-4. Instructor training and qualification.

(a) The division shall establish standards for an approved motorcycle rider education instructor preparation course. Successful completion of the course shall require the participant to demonstrate knowledge of the course material, knowledge of safe motorcycle operating practices, and the necessary aptitude for instructing students.

(b) The division shall establish minimum requirements for the qualification of a rider education instructor.

§17B-1D-5. Program implementation.

The division may enter into contracts with either public or private organizations for technical assistance in conducting rider and instructor training courses, if the courses are administered and taught according to standards established by the division. An organization conducting such courses may charge a reasonable tuition fee. The division shall determine the maximum tuition fee an organization may charge.
§17B-ID-6. Exemption from motorcycle license examination.

1 The commissioner may exempt applicants for a motorcycle driver’s license or endorsement from all or part of the special motorcycle license examination required by section seven-b, article two of this chapter if the applicant presents a certificate of completion of the rider training course specified in sections two and three, article one-d of this chapter.

§17B-ID-7. Motorcycle safety account.

1 (a) There is hereby created a special fund in the state treasury which shall be designated the “motorcycle safety fund”. The fund shall consist of all moneys received from motorcycle driver licensing fees except instruction permit fees, one half of the moneys received from the motorcycle safety fee assessed with each motorcycle registration under section three-b, article ten, chapter seventeen-a of this code and any other moneys specifically allocated to the fund. The fund shall not be treated by the auditor and treasurer as part of the general revenue of the state. The fund shall be a special revolving fund to be used and paid out upon order of the commissioner of motor vehicles solely for the purposes specified in this chapter.

1 (b) The fund shall be used by the division of motor vehicles to defray the cost of implementing and administering the motorcycle safety education program established in section two, article one-d of this chapter. Moneys in the special revolving fund may also be used to defray the cost of implementing and administering the motorcycle driver licensing program.

§17B-ID-8. Authority for regulations.

1 The division is authorized to adopt such rules and regulations as are necessary to carry out the provisions of this article in accordance with the provisions of chapter twenty-nine-a of this code.

§17B-ID-9. Effective date.

1 This article shall become effective on the first day of July, one thousand nine hundred ninety-two.
ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; chauffeur licensee need not procure driver license; licensees need not obtain local government license; motorcycle driver license.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

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

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

§17B-2-8. Issuance and contents of licenses; fees.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

§17B-2-15. Authority for regulations.

§17B-2-1. Drivers must be licensed; chauffeur licensee need not procure driver license; licensees need not obtain local government license; motorcycle driver license.

(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 license under the provisions of this code.

No person shall drive a motor vehicle as a chauffeur unless he holds a valid chauffeur license. No person may receive a chauffeur license until he surrenders to the division any driver license issued to him or an affidavit that he does not possess a driver license.

Any person holding a valid chauffeur license hereunder need not procure a driver license.

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) 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, 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, article two of this chapter for motorcycle
operation or has a valid motorcycle instruction permit.

§17B-2-5. Qualifications, issuance and fee for instruction
permits.

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
appeared before the department of public safety and
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 shall entitle the
applicant while having such permit in his 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 or a driver's education or
driving school instructor that is acting in an official
capacity as an instructor, who is occupying a seat beside
the driver, except in the event the permittee is operating
a motorcycle, but in no event shall the permittee be
allowed to operate a motorcycle upon a public highway
until reaching sixteen years of age. Any such instruction
permit issued to a person under the age of sixteen shall
expire sixty days after the permittee reaches sixteen
years of age: Provided, That only permittees who have
reached their sixteenth birthday are eligible to take the
driving examination as provided in section six of this
article. The instruction permit may be renewed for an
additional period of sixty days. Any such permit issued
to a person who has reached the age of sixteen shall be
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 such instruction permit shall be 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 approp-
Any person sixteen years of age or older may apply to the division for a motorcycle instruction permit. The division of motor vehicles may, in its discretion, after the applicant has appeared before the department of public safety and 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 such permit in his immediate possession to drive a motorcycle upon the public streets or highways for a period of sixty 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 shall be 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, chapter seventeen-b of this code.

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

The department of public safety shall administer a separate motorcycle examination for applicants for a license valid for operation of a motorcycle. Any applicant for a license valid for operation of a motorcycle shall be required to successfully complete the motorcycle examination, which shall be in addition to the examination administered pursuant to section seven, article two, chapter seventeen-b of this code: Provided, That the commissioner of motor vehicles 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 thereto 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, article two, chapter seventeen-b of this code, 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 department shall issue a motorcycle endorsement on the driver license of the applicant, or shall issue a special motorcycle-only license if the applicant does not possess a driver license.

Any person who already holds a valid driver license on or before the first day of April, one thousand nine hundred ninety-two, upon application and payment of the required fee to the division of motor vehicles at any time between the first day of April, one thousand nine hundred ninety-two, and the thirtieth day of June, one thousand nine hundred ninety-two, may be issued a motorcycle endorsement without being required to take the examination specified in this section. On or after the first day of July, one thousand nine hundred ninety-two, every person, including those holding valid driver license, shall be 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 a special revolving fund to be used and paid out upon order of
the superintendent of public safety solely for the
purposes specified in this article.

The fund shall be used by the department of public
safety to defray the costs of implementing and admin-
istering a special motorcycle license examination,
including a motorcycle driving test.

§17B-2-8. Issuance and contents of licenses; fees.

(1) The department shall, upon payment of the
required fee, issue to every applicant qualifying therefor
a driver license, or motorcycle-only license. Each license
shall contain a coded number assigned to the licensee,
the full name, date of birth, residence address, a brief
description and a color photograph of the licensee and
either a facsimile of the signature of the licensee or a
space upon which the signature of the licensee shall be
written with pen and ink immediately upon receipt of
the license. No license shall be valid until it has been
so signed by the licensee. A driver license which is valid
for operation of a motorcycle shall contain a motorcycle
endorsement. The department shall use such process or
processes in the issuance of licenses that will, insofar as
possible, prevent any alteration, counterfeiting, dupli-
cation, reproduction, forging or modification of, or the
superimposition of a photograph on, such license.

(2) The fee for the issuance of a driver license shall
be ten dollars. The one-time only additional fee for
adding a motorcycle endorsement to a driver license
shall be five dollars. The fee for issuance of a motorcy-
cle-only license shall be ten dollars. The fees for the
motorcycle endorsement or motorcycle-only license shall
be paid into a special fund in the state treasury known
as the motorcycle safety fund as established in section
seven, article one-d, chapter seventeen-b of this code.

(3) The division of motor vehicles shall mark any
license which is reissued following a suspension of a
person's license to operate a motor vehicle in this state
with the type of violation for which the original license
was suspended and shall indicate the date of the
violation. For purposes of this section, any conviction
under the provisions of subsections (a) and (b) of the
prior enactment of section two, article five, chapter
seventeen-c of this code which offense was committed
within a period of five years immediately preceding the
effective date of the present section two, article five,
chapter seventeen-c of this code, shall be treated as a
violation to which this section is applicable and revoca-
tions based on such convictions shall be marked on
licenses which are hereafter issued.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

(1) Every driver license shall expire four years from
the date of its issuance, except that the driver license
of any person in the armed forces shall be extended for
a period of six months from the date the person is
separated under honorable circumstances from active
duty in the armed forces.

(2) A person who allows his driver license to expire
may apply to the department for renewal thereof.
Application shall be made upon a form furnished by the
department and shall be accompanied by payment of the
fee required by section eight of this article plus an
additional fee of one dollar and fifty cents. The
commissioner shall determine whether such person
qualifies for a renewed license and may, in his discre-
tion, renew any expired license without examination of
the applicant.

(3) Each renewal of a driver license shall contain a
new color photograph of the licensee. By first class mail
to the address last known to the department, the
commissioner shall notify each person who holds a valid
driver 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.

§17B-2-15. Authority for regulations.

(a) The commissioner of the division of motor vehi-
cles is authorized to adopt such rules and regula-
tions as are necessary to carry out the license and
endorsement provisions of this chapter and the provi-
visions regarding motor vehicle registration in accordance
with the provisions of chapter twenty-nine-a of this code.

(b) The superintendent of the department of public
safety is authorized to adopt such rules and regulations
as are necessary to carry out the provisions relating to
the issuance of an instruction permit and conducting the
license qualifying examinations provided for in this
chapter in accordance with the provisions of chapter
twenty-nine-a of this code.

CHAPTER 135
(Com. Sub. for H. B. 4544—By Delegates Ashcraft and Mezzatesta)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twelve,
chapter seventeen-c of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to overtaking and passing school buses; and criminal
penalties.

Be it enacted by the Legislature of West Virginia:

That section seven, article twelve, 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 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties;
signs and warning lights upon buses; remo­
val of warning lights, lettering, etc.,
upon sale of buses; highways with separate
roadways.

(a) The driver of a vehicle upon meeting or overtaking
from either direction any school bus which has stopped
for the purpose of receiving or discharging any school
children shall stop the vehicle before reaching such
school bus when there is in operation on said school bus
flashing warning signal lights, as referred to in section eight of this article, and said driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated. This section applies wherever the school bus is receiving or discharging children, including, but not limited to, 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 school bus which is on a different roadway or adjacent to such highway and where pedestrians are not permitted to cross the roadway. Any such 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 jail not more than six months, or both fined and imprisoned. If the identity of the driver cannot be ascertained, then any such 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 such conviction shall not subject such owner or lessee to further administrative or other penalties for said offense, notwithstanding other provisions of this code to the contrary.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words “school bus” in letters not less than eight inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school, all markings thereon indicating “school bus” shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual shall have all flashing warning lights disconnected and all lettering removed or permanently obscured, except when sold or transferred for the transportation of school children.
AN ACT to amend and reenact section forty-eight, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to altered suspension systems of motor vehicles; unlawful acts; and providing special inspection stickers for certain specially designed or modified motor vehicles.

Be it enacted by the Legislature of West Virginia:

That section forty-eight, 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) No person may operate upon a public highway any motor vehicle registered or required to be registered in this state if it has been modified by alteration of its bumper mounting on the frame more than four inches from the lower edge of the original manufactured bumper configuration for that vehicle. The bumper must be at least three inches in vertical width, centered on the center line of the motor vehicle and not less than the width of the wheel track distance. The maximum distance between the vehicle body to the vehicle frame may not exceed three inches. The distance from the vehicle body to the vehicle frame shall be measured from the vehicle body mount seat to the vehicle frame mount seat. No vehicle may be modified to cause the vehicle body or chassis to come in contact with the ground, expose the fuel tank to damage from collision, or cause the wheels to come in contact with the body under normal operation. No part of the original suspension system may be disconnected to defeat the safe operation of the suspension system. Front end...
suspension by the use of lift blocks is expressly prohibited. However, nothing contained in this section prevents the installation of heavy duty equipment, including shock absorbers and overload springs. Nothing contained in this section prohibits the operation on a public highway of a motor vehicle with normal wear to the suspension system if such normal wear does not adversely affect the control of the vehicle.

(b) No person may operate upon a public highway any motor vehicle registered in this state if it has been modified by alteration of its altitude from the ground to the extent that its bumpers, measured to any point on the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, do not fall within the limits specified herein for its gross vehicle weight rating category. The front and rear bumper height of trucks whose gross vehicle weight rating is ten thousand pounds or less may be no less than six inches and no more than thirty-one inches. The provisions of this subsection do not apply to trucks with a gross vehicle weight rating in excess of ten thousand pounds. For the purpose of this section, the term "gross vehicle weight ratings" means manufacturer's gross vehicle weight ratings established for that vehicle.

(c) In the absence of bumpers, and in cases where bumper heights have been lowered or modified more than four inches, height measurements under subsection (a) or (b) shall be made to the bottom of the frame rail.

(d) This section does not apply to specially designed or modified motor vehicles when operated off the public highways in races and similar events. Such motor vehicles may be lawfully towed on the highways of this state.

(e) No person may operate upon a public highway any motor vehicle registered or required to be registered in this state if it has been modified by alteration as set out in the provisions of this section unless the tires on the altered motor vehicle meet specifications approved by the United States department of transportation. In
addition, neither the motor vehicle nor the chassis may come in contact with the tires under normal operation.

(f) Modified vehicles must have a special inspection sticker which must be inspected by the thirty-first day of July, one thousand nine hundred ninety. The fee for the modified vehicle stickers will be twenty-five dollars with the department of public safety establishing rules concerning such inspection. Each municipal, county and state law-enforcement agency must record on accident report forms whether a modified vehicle was involved in the accident.

CHAPTER 137
(Com. Sub. for S. B. 339—By Senator Whitlow)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one, nine, ten, eleven, thirteen and twenty, article four, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections five and seven, article two-a of said chapter, relating to the suspension of the driver license; decreasing the number of days of suspension for failure to have insurance; providing the commissioner authority to withdraw suspension of driver license; and eliminating the requirement that certain persons get high risk insurance before reinstatement of their driver license.

Be it enacted by the Legislature of West Virginia:

That sections one, nine, ten, eleven, thirteen and twenty, article four, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections five and seven, article two-a of said chapter be amended and reenacted to read as follows:

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.
§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.

(a) An insurance company shall provide the division of motor vehicles with a cancellation notice within ten days of the effective date of cancellation whenever the company issues or causes to be issued a cancellation under the provisions of subsections (b) through (e), section one, article six-a, chapter thirty-three of this code. The division shall then suspend the driver license of the owner of such vehicle for a period of thirty days and shall suspend the motor vehicle registration until proof of insurance is presented to the division.

(b) On or before the fifteenth day of January, one thousand nine hundred eighty-five, the commissioner of motor vehicles shall report to the Legislature upon proceedings pursuant to this section. The report shall include the total number of statements selected for verification as required by section three, article three, chapter seventeen-a, the total number of notices received from insurers, the total number of notices of pending suspensions issued and the total number of cases in which cancellation was found to have resulted in a lapse of coverage upon a vehicle operated upon the highways of this state during the prior year.

(c) No policy of motor vehicle liability insurance issued or delivered for issuance in this state shall be contracted for a period of less than ninety days: Provided, That the insurance commissioner may establish exceptions thereto by rules and regulations to chapter twenty-nine-a.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

(a) Any owner of a motor vehicle, subject to the provisions of this article, who fails to have the required security in effect at the time such vehicle is being operated upon the roads or highways of this state, shall have his or her driver license suspended by the commissioner of the division of motor vehicles for a period of thirty days and shall have his or her motor vehicle registration revoked until such time as he or she
shall present to the division of motor vehicles the proof of security required by this article: Provided, That if a motor vehicle is registered in more than one name, the driver license of only one of the owners shall be suspended by the commissioner.

(b) Any person who knowingly operates a motor vehicle upon the roads or highways of this state, which does not have the security required by the provisions of this article, shall have his or her driver license suspended by the commissioner for a period of thirty days.

(c) A person's driver license shall be suspended for a period of thirty days, if the person is operating a motor vehicle designated for off highway use upon the roads and highways of this state without the required security in effect, if the motor vehicle is not properly registered and licensed, or if the required security was cancelled.

(d) The commissioner may withdraw a suspension of a driver license provided that the commissioner is satisfied that there was not a violation of the provisions of required security related to operation of a motor vehicle upon the roads or highways of this state by such person. The commissioner may request additional information as needed in order to make such determination.

(e) No person shall have his or her driver license or motor vehicle registration suspended or revoked under any provisions of this section unless he or she shall first be given written notice of such suspension or revocation sent by certified mail, at least twenty days prior to the effective date of such suspension or revocation, and upon such person's written request, sent by certified mail, he or she shall be afforded an opportunity for a hearing thereupon as well as a stay of the commissioner's order of suspension or revocation and an opportunity for judicial review of such hearing. Upon affirmation of the commissioner's order, the owner or operator, as the case may be, shall surrender such revoked license and/or registration or have the same impounded in the manner
set forth in the provisions of section seven, article nine, chapter seventeen-a of the code.

(f) Such suspended driver license shall be reinstated following the period of suspension upon compliance with the conditions set forth in this article and such revoked motor vehicle registration shall be reissued only upon lawful compliance with the provisions of this article.

(g) If the commissioner has previously suspended the person’s driver license under the provisions of this section or section five of this article, the period of suspension shall be for a period of ninety days.

CHAPTER 138
(S. B. 136—By Senators Jackson and Chafin)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to writs, process and orders of publication; authorizing the service of process upon nonresident motorists involved in accidents or collisions while in the state of West Virginia; appointing the secretary of state as agent or attorney-in-fact for purposes of service of process upon such nonresident motorists; appointing such nonresident defendant’s insurance company as agent or attorney-in-fact for purposes of service of process upon failure of secretary of state to effect service; actions by or against nonresident’s estate; bond requirements; notice of service, summons and complaint to be sent by registered or certified mail, return receipt requested, by secretary of state to nonresident defendant; fees for service; requirements for service upon nonresident defendant’s insurance company upon affidavit of defendant’s nonresidency and failure to obtain service by secretary of state; and definitions of terms.

Be it enacted by the Legislature of West Virginia:
That section thirty-one, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of secretary of state, insurance company, as agents; service of process.

(a) Every nonresident, for the privilege of operating a motor vehicle on a public street, road or highway of this state, either personally or through an agent, appoints the secretary of state, or his or her successor in office, to be his or her agent or attorney-in-fact upon whom may be served all lawful process in any action or proceeding against him or her in any court of record in this state arising out of any accident or collision occurring in the state of West Virginia in which such nonresident may be involved: Provided, That in the event process against a nonresident defendant cannot be effected through the secretary of state, as provided by this section, for the purpose only of service of process, such nonresident motorist shall be deemed to have appointed as his or her agent or attorney-in-fact any insurance company which has a contract of automobile or liability insurance with said nonresident defendant.

(b) For purposes of service of process as provided in this section, every insurance company shall be deemed the agent or attorney-in-fact of every nonresident motorist insured by such company if the insured nonresident motorist is involved in any accident or collision in this state and service of process cannot be effected upon said nonresident through the office of the secretary of state. Upon receipt of process as hereinafter provided, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

(c) A nonresident operating a motor vehicle in this state, either personally or through an agent, is deemed to acknowledge the appointment of the secretary of
state, or, as the case may be, his or her automobile
insurance company, as his or her agent or attorney-in-
fact, or the agent or attorney-in-fact of his or her
administrator, administratrix, executor or executrix in
the event the nonresident dies, and furthermore is
deemed to agree that any process against him or her or
against his or her administrator, administratrix,
executor or executrix, which is served in the manner
hereinafter provided, shall be of the same legal force
and validity as though said nonresident or his or her
administrator, administratrix, executor or executrix
were personally served with a summons and complaint
within this state.

Any action or proceeding may be instituted, continued
or maintained on behalf of or against the administrator,
administrator, executor or executrix of any nonresident
who dies during or subsequent to an accident or collision
resulting from the operation of a motor vehicle in this
state by the nonresident or his or her duly authorized
agent.

(d) At the time of filing a complaint against a
nonresident motorist who has been involved in an
accident or collision in the state of West Virginia and
before a summons is issued thereon, the plaintiff, or
someone for him or her, shall execute a bond in the sum
of one hundred dollars before the clerk of the court in
which the action is filed, with surety to be approved by
said clerk, conditioned that on failure of the plaintiff to
prevail in the action he or she will reimburse the
defendant, or cause the defendant to be reimbursed, the
necessary expense incurred in the defense of the action
in this state. Upon the issue of a summons the clerk will
certify thereon that the bond has been given and
approved.

(e) Service of process upon a nonresident defendant
shall be made by leaving the original and two copies of
both the summons and complaint, together with the
bond certificate of the clerk, and a fee of five dollars
with the secretary of state, or in his or her office, and
said service shall be sufficient upon the nonresident
defendant or, if a natural person, his or her administra-
tor, administratrix, executor or executrix: Provided,
That notice of service and a copy of the summons and
complaint shall be sent by registered or certified mail,
return receipt requested, by the secretary of state to the
nonresident defendant. The return receipt signed by the
defendant or his or her duly authorized agent shall be
attached to the original summons and complaint and
filed in the office of the clerk of the court from which
process is issued. In the event the registered or certified
mail sent by the secretary of state is refused or
unclaimed by the addressee or if the addressee has
moved without any forwarding address, the registered
or certified mail returned to the secretary of state, or
to his or her office, showing thereon the stamp of the
post office department that delivery has been refused or
not claimed or that the addressee has moved without any
forwarding address, shall be appended to the original
summons and complaint and filed in the clerk's office
of the court from which process issued. The court may
order such continuances as may be reasonable to afford
the defendant opportunity to defend the action.

(f) The fee of five dollars, remitted to the secretary of
state at the time of service, shall be taxed in the costs
of the proceeding and the secretary of state shall pay
into the state treasury all funds so coming into his or
her hands from such service. The secretary of state shall
keep a record in his or her office of all service of process
and the day and hour of service thereof.

(g) In the event service of process upon a nonresident
defendant cannot be effected through the secretary of
state as provided by this section, service may be made
upon the defendant's insurance company. The plaintiff
must file with the clerk of the circuit court an affidavit
alleging that the defendant is not a resident of this state;
that process directed to the secretary of state was sent
by registered or certified mail, return receipt requested;
that the registered or certified mail was returned to the
office of the secretary of state showing the stamp of the
post office department that delivery was refused or that
the notice was unclaimed or that the defendant addressee moved without any forwarding address; and that the
secretary of state has complied with the provisions of subsection (e) herein. Upon receipt of process the insurance company may, within thirty days, file an answer or other pleading and take any action allowed by law in the name of the defendant.

(h) The following words and phrases, when used in this article, shall, for the purpose of this article and unless a different intent on the part of the Legislature is apparent from the context, have the following meanings:

(1) “Duly authorized agent” means and includes, among others, a person who operates a motor vehicle in this state for a nonresident as defined in this section and chapter, in pursuit of business, pleasure or otherwise, or who comes into this state and operates a motor vehicle for, or with the knowledge or acquiescence of, a nonresident; and includes, among others, a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and acknowledges receipt for mail addressed to the nonresident.

(2) “Motor vehicle” means and includes any self-propelled vehicle, including motorcycle, tractor and trailer, not operated exclusively upon stationary tracks.

(3) “Nonresident” means any person who is not a resident of this state or a resident who has moved from the state subsequent to an accident or collision, and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary association that has moved from the state subsequent to an accident or collision.

(4) “Nonresident plaintiff or plaintiffs” means a nonresident who institutes an action in a court in this state having jurisdiction against a nonresident in pursuance of the provisions of this article.

(5) “Nonresident defendant or defendants” means a nonresident motorist who, either personally or through his or her agent, operated a motor vehicle on a public
street, highway or road in this state and was involved
in an accident or collision which has given rise to a civil
action filed in any court in this state.

(6) "Street", "road" or "highway" means the entire
width between property lines of every way or place of
whatever nature when any part thereof is open to the
use of the public, as a matter of right, for purposes of
vehicular traffic.

(7) "Insurance company" means any firm, corpora-
tion, partnership or other organization which issues
automobile insurance.

(i) The provision for service of process herein is
cumulative and nothing herein contained shall be
construed as a bar to the plaintiff in any action from
having process in such action served in any other mode
and manner provided by law.

CHAPTER 139

(Com. Sub. for S. B. 11—By Senator Jackson)

[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

AN ACT to repeal section twenty, article twelve, chapter eight
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to notice of suit against
municipalities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND
ALLIED RELATIONS OF MUNICIPALITIES,
GOVERNING BODIES AND MUNICIPAL OFFIC-
ERS AND EMPLOYEES; SUITS AGAINST
MUNICIPALITIES.

§1. Repeal of article relating to notice of suit against
municipalities.

Section twenty, article twelve, chapter eight of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, is hereby repealed.
AN ACT to amend and reenact section twenty-three, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve-a, article nineteen of said chapter; and to amend and reenact section ten, article twenty of said chapter, all relating to liens for delinquent sewer, water or electric service rates and charges; failure of user to cure delinquency; providing that an owner of real property may not be liable for delinquent rates or charges of a tenant; suits to collect delinquent charges; deferral of filing fees and court costs; limitations on foreclosure.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twelve-a, article nineteen of said chapter be amended and reenacted; and that section ten, article twenty of said chapter be amended and reenacted, all 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.

ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS: SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

§8-18-23. Authority to require discontinuance of water service by provider utility for nonpayment of sewer service rates and charges; lien for delinquent service rates and charges; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.
(a) When any municipality owns, maintains, operates or provides sewer facilities to its residents and customers and does not own, maintain, operate or provide water facilities to them when the same is provided by any other publicly or privately owned utility, municipality or public service district, the municipality providing sewer facilities may require the provider of water facilities to discontinue water service to any of its users who are delinquent in the payment of sewer service rates and charges to the municipality. The provider of water facilities is empowered and authorized hereby to discontinue water service upon demand of the municipality for this purpose; however, prior to discontinuance of any water service, the municipality shall contract with the provider of water facilities which contract shall provide that the municipality shall reimburse the provider of water facilities for all costs and expenses incurred in both the termination of water service to the delinquent user of sewer facilities and the subsequent resumption of water service to such user. The contract shall provide for reasonable methods and assurances so that the provider of water facilities will be protected and held harmless from claims and damages when water service is discontinued in error or in violation of the rights of the user through the fault of the municipality providing sewer facilities and making the demand for discontinuance of water service to the user of such sewer facilities. Any contract made for this purpose shall have the approval of the public service commission prior to its execution and performance. Any disconnection of water service must comply with all rules, regulations and orders of the public service commission.

(b) Whenever any rates and charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the user shall be held liable at law until such time as all such rates and charges are fully paid.

(c) All rates and charges whenever delinquent, as provided by ordinance of the municipality, shall, when
notice thereof is duly recorded in the office of the clerk
of the county commission wherein the subject real
property is situate, be liens of equal dignity, rank and
priority with the lien on such premises of state, county,
school and municipal taxes for the amount thereof upon
the real property served, and the municipality shall
have plenary power and authority from time to time to
enforce such lien in a civil action to recover the money
due for such services rendered plus court fees and costs
and a reasonable attorney's fee: Provided, That an owner
of real property may not be held liable for the delin-
quent rates or charges for services or facilities of a
tenant, nor shall any lien attach to real property for the
reason of delinquent rates or charges for services or
facilities of a tenant of such real property, unless the
owner has contracted directly with the municipality to
purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of
filing fees or other fees and costs incidental to the
bringing and maintenance of an action in magistrate
court for the collection of the delinquent rates and
charges. If the municipality collects the delinquent
account, plus fees and costs, from its customer or other
responsible party, the municipality shall pay to the
magistrate court the filing fees or other fees and costs
which were previously deferred.

(e) No municipality may foreclose upon the premises
served by it for delinquent rates and charges for which
a lien is authorized by this section except through the
bringing and maintenance of a civil action for such
purpose brought in the circuit court of the county
wherein the municipality lies. In every such action, the
court shall be required to make a finding based upon
the evidence and facts presented that the municipality
had exhausted all other remedies for the collection of
debts with respect to such delinquencies prior to the
bringing of such action. In no event shall foreclosure
procedures be instituted by any municipality or on its
behalf unless such delinquency has been in existence or
continued for a period of two years from the date of the
ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

*§8-19-12a. Lien for delinquent service rates and charges; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) Whenever any rates and charges for water services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the user shall be held liable at law until such time as all such rates and charges are fully paid.

(b) All rates or charges for water service whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(c) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the

*Clerk's Notes: §8-19-12a was also amended by H. B. 4084 (Chapter 141), which passed prior to this act.
(d) No municipality may foreclose upon the premises served by it for delinquent rates or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules and regulations for the repair, maintenance and operation and management of the combined waterworks and sewerage system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and regulations and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure and the sewerage
harmless insofar as it is reasonably possible so to do, and any such municipality shall have plenary power and authority to charge the users for the use and service of such combined waterworks and sewerage system and to establish rates or charges for such purpose. Separate rates or charges may be fixed for the water and sewer services respectively or combined rates or charges for the combined water and sewer services. Such rates or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined waterworks and sewerage system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Rates or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates or charges shall be changed from time to time as needful, consistent with the provisions of this article.

(b) Whenever any rates and charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the user shall be held liable at law until such time as all such rates and charges are fully paid.

(c) All rates or charges for water service and sewer service whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee:

Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real
property, unless the owner has contracted directly with
the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of
filing fees or other fees and costs incidental to the
bringing and maintenance of an action in magistrate
court for the collection of the delinquent rates and
charges. If the municipality collects the delinquent
account, plus fees and costs, from its customer or other
responsible party, the municipality shall pay to the
magistrate court the filing fees or other fees and costs
which were previously deferred.

(e) No municipality may foreclose upon the premises
served by it for delinquent rates, fees or charges for
which a lien is authorized by this section except through
the bringing and maintenance of a civil action for such
purpose brought in the circuit court of the county
wherein the municipality lies. In every such action, the
court shall be required to make a finding based upon
the evidence and facts presented that the municipality
had exhausted all other remedies for the collection of
debts with respect to such delinquencies prior to the
bringing of such action. In no event shall foreclosure
procedures be instituted by any municipality or on its
behalf unless such delinquency had been in existence or
continued for a period of two years from the date of the
first such delinquency for which foreclosure is being
sought.

CHAPTER 141

(Com. Sub. for H. B. 4084—By Delegates Farley and R. Burk)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article nineteen, chapter eight
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to the acquisition,
construction and operation of municipal and county
waterworks and electric power systems; defining terms;
extension of corporate and county limits; notice provi-
sions; right of eminent domain when acquiring, constructing, establishing or extending waterworks or electric power systems; providing for revenue bond financing for such projects; issuance of revenue bonds; providing for exemption from taxation of all such bonds and interest earned thereon; providing for exemption from taxation of municipally-owned waterworks systems and electric power systems; publication of abstract of ordinance or order; terms of bonds; bonds do not constitute indebtedness of municipality or county commission; lien of bondholders; covenants with bondholders; operating contract; rates or charges for water or electric power and disposition of surplus; service charges; authorizing municipality or county commission to determine amount of bonds; liens for delinquent service rates and charges; discontinuance of water or electric power service for nonpayment; bonds for additions, betterments and improvements; system of accounts; rights of bondholders; permitting acceptance of grants, loans, advances and agreements; alternative method for constructing or improving and for financing waterworks or electric power systems; alternative procedure for acquisition, construction or improvement of waterworks or electric power system; and liberal construction.

Be it enacted by the Legislature of West Virginia:

That article nineteen, 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 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

PART I. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS AUTHORIZED; DEFINITION.

§8-19-1. Acquisition and operation of municipal and county waterworks and electric power systems; construction of improvements to municipal and county electric power systems; extension beyond corporate limits; definitions.

§8-19-3. Right of eminent domain; limitations.

§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.

§8-19-5. Publication of abstract of ordinance or order and notice; hearing.
§8-19-6. Amount, negotiability and execution of bonds.

§8-19-7. Bonds payable solely from revenues; not to constitute municipal or county indebtedness.

§8-19-8. Lien on bondholders; deeds of trust; security agreements; priority of liens.


§8-19-10. Operating contract.

§8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus.

§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.

§8-19-12a. Lien for delinquent service rates and charges; notice of delinquency; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

§8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges.


§8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership.


§8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

§8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.

§8-19-20. Article to be liberally construed.

§8-19-1. Acquisition and operation of municipal and county waterworks and electric power systems; construction of improvements to municipal and county electric power systems; extension beyond corporate limits; definitions.

(a) Subject to and in accordance with the provisions of this article, any municipality or county commission may acquire, construct, establish, extend, equip, repair, maintain and operate or lease to others for operation, a waterworks system or an electric power system or construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, That such municipality or county commission shall not serve or supply water facilities or electric power facilities or services within the corporate limits of any other municipality or county commission.
without the consent of the governing body of such other municipality or county commission.

(b) Any municipality or county commission which intends to file an application with the federal energy regulatory commission for a license to acquire, construct, establish, extend, maintain and operate, or lease to others for operation, an electric power system, shall give written notice by certified mail, return receipt requested, and shall give public notice by Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be the municipality or county in which the system is to be located to the governing body of the municipality or the county commission in which such system is or shall be located or, if such system is or shall be located outside of a municipality or county, to the county commission of the county in which such system is or shall be located, at least sixty days prior to the filing of such application: Provided, That the provisions of this subsection shall not apply to any municipality or county commission which, on the date of the passage of this act, has obtained a license from the federal energy regulatory commission to acquire, construct, establish, extend, maintain and operate, or lease to others for operation, an electric power system. If the municipality or county commission receiving such notice does not respond to the notice within sixty days of receipt of such notice, then such other municipality or the county commission shall be deemed to have consented to the application for the proposed electric power system. If such other municipality or the county commission notifies the municipality or county commission that it objects to the proposed electric power system, such other municipality or the county commission shall hold a public hearing on the proposed system within sixty days of receipt of such notice from the municipality or county commission.

(c) As used in this article:

(1) “Waterworks system” means a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage
Ch. 141] MUNICIPALITIES 1155

55 tanks, pump tanks, pumping stations, intakes, wells,
56 impounding reservoirs, pumps, machinery, purification
57 plants, softening apparatus and all other facilities
58 necessary, appropriate, useful, convenient or incidental
59 in connection with or to a water supply system.

60 (2) "Electric power system" means a system or facility
61 which produces electric power in its entirety or provides
62 for the distribution of electric power for local consump-
63 tion and use or for distribution and resale or any
64 combination thereof, or any integral part thereof,
65 including, but not limited to, power lines and wires,
66 power poles, guy wires, insulators, transformers,
67 generators, cables, power line towers, voltage regula-
68 tors, meters, power substations, machinery and all other
69 facilities necessary, appropriate, useful or convenient or
70 incidental in connection with or to an electric power
71 supply system.

PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.
1 For the purpose of acquiring, constructing, establish-
2 ing or extending any waterworks system or electric
3 power system, or for the purpose of constructing any
4 additions, betterments or improvements to any water-
5 works or electric power system, or for the purpose of
6 acquiring any property necessary, appropriate, useful,
7 convenient or incidental for or to any waterworks or
8 electric power system, under the provisions of this
9 article, the municipality or county commission shall
10 have the right of eminent domain as provided in chapter
11 fifty-four of this code: Provided, That such right of
12 eminent domain for the acquisition of a privately owned
13 waterworks system, or electric power system, or any
14 part thereof, shall not be exercised without prior
15 approval of the public service commission, and in no
16 event shall any municipality or county commission
17 construct, establish or extend beyond the corporate
18 limits of said municipality or county line a municipal
19 or county waterworks or electric power system under
20 the provisions of this article to supply service in
21 competition with an existing privately or municipally or
city owned waterworks or electric power system in
such municipality or county or within the proposed
extension of such system, unless a certificate of public
convenience and necessity therefor shall have been
issued by the public service commission: Provided,
however, That a municipality or county commission may
not exercise such right of eminent domain over a
privately owned electric power system or any part
thereof for the purpose of acquiring, constructing,
establishing or extending an electric power system.

Subject to the provisions of this article and notwith-
standing the provisions of section nineteen, article
twelve of this chapter to the contrary, a municipality or
county commission may acquire, construct, establish,
extend, equip, repair, maintain and operate, or lease to
others for operation, electric generators or electric
generating systems or electric transmission systems
more than one mile beyond the corporate limits of such
municipality or county line and said electric generation
systems shall not be under the jurisdiction of the public
service commission.

PART IV. Revenue Bond Financing.

§8-19-4. Estimate of cost; ordinance or order for issuance
of revenue bonds; interest on bonds; rates for
services; exemption from taxation.

Whenever a municipality or county commission shall,
under the provisions of this article, determine to
acquire, by purchase or otherwise, construct, establish,
extend or equip a waterworks system or an electric
power system, or to construct any additions, betterments
or improvements to any waterworks or electric power
system, it shall cause an estimate to be made of the cost
thereof, and may, by ordinance or order, provide for the
issuance of revenue bonds under the provisions of this
article, which ordinance or order shall set forth a brief
description of the contemplated undertaking, the
estimated cost thereof, the amount, rate or rates of
interest, the time and place of payment, and other
details in connection with the issuance of the bonds.
Such bonds shall be in such form and shall be negotiated
and sold in such manner and upon such terms as the
governing body of such municipality or county commis-
sion may by ordinance or order specify. All such bonds
and the interest thereon shall be exempt from all
taxation by this state, or any county, municipality or
county commission, political subdivision or agency
thereof. Notwithstanding any other provision of this
code to the contrary, the real and personal property
which a municipality or county has acquired and
constructed according to the provisions of this article,
and any leasehold interest therein held by other persons,
shall be deemed public property and shall be exempt
from taxation by the state, or any county, municipality
or other levying body, so long as the same is owned by
such municipality or county. Such bonds shall bear
interest at a rate per annum set by the municipality or
county commission, payable at such times, and shall be
payable as to principal at such times, not exceeding fifty
years from their date, and at such place or places,
within or without the state, as shall be prescribed in the
ordinance or order providing for their issuance. Unless
the governing body of the municipality or county
commission shall otherwise determine, such ordinance
or order shall also declare that a statutory mortgage lien
shall exist upon the property so to be acquired,
constructed, established, extended or equipped, fix
minimum rates or charges for water or electricity to be
collected prior to the payment of all of said bonds and
shall pledge the revenues derived from the waterworks
or electric power system for the purpose of paying such
bonds and interest thereon, which pledge shall definitely
fix and determine the amount of revenues which shall
be necessary to be set apart and applied to the payment
of the principal of and interest upon the bonds and the
proportion of the balance of such revenues, which are
to be set aside as a proper and adequate depreciation
account, and the remainder shall be set aside for the
reasonable and proper maintenance and operation
thereof. The rates or charges to be charged for the
services from such waterworks or electric power system
shall be sufficient at all times to provide for the payment
of interest upon all bonds and to create a sinking fund
to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance or order authorizing the issuance of said bonds.

§8-19-5. Publication of abstract of ordinance or order and notice; hearing.

After the ordinance or order for any project under this article has been adopted, an abstract of the ordinance or order, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance or order, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality or county. The notice to be published with said abstract of the ordinance or order shall state that said ordinance or order has been adopted, that the municipality or county commission contemplates the issuance of the bonds described in the ordinance or order, that any person interested may appear before the governing body, upon a certain date, which shall be not less than ten days subsequent to the date of the first publication of such abstract and notice and which shall not be prior to the date of the last publication by such abstract and notice, and present protests, and that a certified copy of the ordinance or order is on file with the governing body for review by interested parties during the office hours of the governing body. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it considers proper in the premises: Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality or county, then the governing body of said municipality or county shall not take further action unless four fifths of the
31 qualified members of said governing body assent thereto.

§8-19-6. Amount, negotiability and execution of bonds.

1 Bonds herein provided for shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of acquisition, construction, establishment, extension or equipment, including engineering, legal and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this article are hereby declared to be negotiable instruments, and the same shall be executed by the proper legally constituted authorities of the municipality or county commission, and be sealed with the corporate seal of the municipality or certified by the county commission, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance or order authorizing the issuance of the bonds.

§8-19-7. Bonds payable solely from revenues; not to constitute municipal or county indebtedness.

1 Bonds issued under the provisions of this article shall be payable solely from the revenues derived from such waterworks or electric power system, and such bonds shall not in any event constitute an indebtedness of such municipality or county within the meaning of any constitutional or statutory provision or limitation, and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of such municipality or county within constitutional or statutory provision or limitation. Subject to the provisions of subsection (b), section twelve of this article, the ordinance or order authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may
be considered necessary or advisable for the assurance
of payment of the bonds thereby authorized and as may
thereafter be issued.

§8-19-8. Lien of bondholders; deeds of trust; security
agreements; priority of liens.

Unless the governing body shall otherwise determine
in the ordinance or order authorizing the issuance of
bonds under this article, there shall be and there is
hereby created and granted a statutory mortgage lien
upon the waterworks or electric power system so
acquired, constructed, established, equipped, extended
or improved from the proceeds of bonds hereby autho-
rized to be issued, which shall exist in favor of the
holder of said bonds and each of them, and to and in
favor of the holder of the coupons attached to said bonds,
and such waterworks or electric power system shall
remain subject to such statutory mortgage lien until
payment in full of the principal of and interest upon said
bonds.

Any municipality or county commission in acquiring
an existing waterworks system or in improving an
existing waterworks or electric power system may
provide that financing therefor may be made by issuing
revenue bonds and delivering the same at such prices
as may be agreed upon within the limitations prescribed
in section six of this article. Any revenue bonds so issued
to provide financing for such existing waterworks or
electric power system or for any improvements to an
existing waterworks or electric power system may be
secured by a mortgage or deed of trust upon and
security interest in the property so acquired or im-
proved or any other interest of the municipality or
county commission in property related thereto as
determined by the municipality or county commission in
the ordinance or order authorizing the issuance of such
revenue bonds; and in such event the holders thereof
shall have, in addition to any other remedies and rights
prescribed by this article, such remedies and rights as
may now or hereafter exist in law in the case of
mortgages or deeds of trust on real property and
security interests in personal property. Such mortgage
or deed of trust, upon its recordation, shall have priority
over all other liens or encumbrances, however created
or arising, on the property covered by such mortgage
or deed of trust, to the same extent and for the same
amount as if the municipality or county were obligated
to pay the full amount secured by such mortgage or deed
of trust immediately upon the recordation of such
mortgage or deed of trust and remained so obligated
until the obligations secured are fully discharged.


Any ordinance or order authorizing the issuance of
bonds hereunder, or any trust indenture with any
banking institution or trust company within or without
the state for the security of said bonds, which any such
municipality or county commission is hereby empow-
ered and authorized to enter into and execute, may
contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of
sale of such bonds or the revenues derived from said
waterworks or electric power system may be applied
and the securing, use and disposition thereof, including,
if deemed desirable, the appointment of a trustee or
depository for any of such funds;

(b) The pledging of all or any part of the revenues
derived from the ownership, control or operation of such
waterworks or electric power system, including any part
thereof heretofore or hereafter acquired, constructed,
established, extended or equipped or derived from any
other sources, to the payment of the principal of or
interest thereon of bonds issued hereunder and for such
reserve or other funds as may be considered necessary
or desirable;

(c) The fixing, establishing and collecting of such
rates or charges for the use of the services and facilities
of the waterworks or electric power system, including
the parts thereof heretofore or hereafter acquired,
constructed, established, extended or equipped and the
revision of same from time to time, as will always
provide revenues at least sufficient to provide for all
expenses of repair, maintenance and operation of such
waterworks or electric power system, the payment of the
principal of and interest upon all bonds or other
obligations payable from the revenues of such water-
works or electric power system, and all reserve and
other funds required by the terms of the ordinance or
order authorizing the issuance of such bonds;

(d) The transfer from the general funds of the
municipality or county commission to the account or
accounts of the waterworks or electric power system of
an amount equal to the cost of furnishing the munici-
pality or county commission or any of its departments,
boards or agencies or the county commission with the
services and facilities of such waterworks or electric
power system;

(e) Subject to the provisions of subsection (b), section
twelve of this article, limitations or restrictions upon the
issuance of additional bonds or other obligations payable
from the revenues of such waterworks or electric power
system, and the rank or priority, as to lien and source
and security for payment from the revenues of such
waterworks or electric power system, between bonds
payable from such revenues;

(f) The manner and terms upon which all bonds and
other obligations issued hereunder may be declared
immediately due and payable upon the happening of a
default in the payment of the principal of or interest
thereon, or in the performance of any covenant or
agreement with bondholders, and the manner and terms
upon which such defaults may be declared cured and the
acceleration of the maturity of such bonds rescinded and
repealed;

(g) Budgets for the annual repair, maintenance and
operation of such waterworks or electric power system
and restrictions and limitations upon expenditures for
such purposes, and the manner of adoption, modifica-
tion, repeal or amendment thereof, including the
approval of such budgets by consulting engineers
designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon
such waterworks or electric power system, or any part
thereof, and the use and disposition of the proceeds of any insurance; and

(i) The keeping of books of account, relating to such undertakings and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified or approved by accountants designated or approved by the holders of bonds issued hereunder.

Any such ordinance, order or trust indenture may also contain such other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities or county commissions plenary power and authority to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities and counties full and complete power and authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the constitution of this state.

§8-19-10. Operating contract.

Any such municipality or county commission may enter into contracts or agreements with any persons for (1) the repair, maintenance and operation and management of the facilities and properties of said waterworks or electric power system, or any part thereof, or (2) the collection and disbursement of the income and revenues therefor, or for both (1) and (2), for such period of time and under such terms and conditions as shall be agreed upon between such municipality or county commission and such persons. Any such municipality or county commission shall have plenary power and authority to provide in the ordinance or order authorizing the issuance of bonds hereunder, or in any trust indenture securing such bonds, that such contracts or agreements
shall be valid and binding upon the municipality and county commission as long as any of said bonds, or interest thereon, is outstanding and unpaid.

§8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus.

Rates or charges for water or electric power fixed precedent to the issuance of bonds shall not be reduced until all of said bonds shall have been fully paid, and may, whenever necessary, be increased in amounts sufficient to provide for the payment of the principal of and interest upon such bonds, and to provide proper funds for the depreciation account and repair, maintenance and operation charges. If any surplus shall be accumulated in the repair, maintenance and operation fund which shall be in excess of the cost of repairing, maintaining and operating the waterworks or electric power system during the remainder of the fiscal year then current, and the cost of repairing, maintaining and operating the said waterworks or electric power system during the fiscal year then next ensuing, then any such excess may be transferred to either the depreciation account or to the bond and interest redemption account, and if any surplus shall be accumulated in the depreciation account over and above that which the municipality or county commission shall find may be necessary for the probable replacements which may be needed during the then present fiscal year, and the next ensuing fiscal year, such excess may be transferred to the bond and interest redemption account, and, if any surplus shall exist in the bond and interest redemption account, the same shall be applied insofar as possible in the purchase or retirement of outstanding revenue bonds payable from such account.

§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.

(a) Every municipality or county commission issuing bonds under the provisions of this article shall thereafter, so long as any of such bonds remain outstanding, repair, maintain and operate its waterworks or electric
power system as hereinafter provided and shall charge, collect and account for revenues therefrom as will be sufficient to pay all repair, maintenance and operation costs, provide a depreciation fund, retire the bonds and pay the interest requirements of the bonds as the same become due. The ordinance or order pursuant to which any such bonds are issued shall pledge the revenues derived from the waterworks or electric power system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance or order pursuant to which such bonds have been issued: Provided, That payment of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality or county commission directly to the United States of America or said agency or department thereof. The bonds hereby authorized shall be issued in such amounts as may be determined necessary to provide funds for the purpose for which they are authorized, and in determining the amount of bonds to be issued it shall be proper to include interest on the bonds for a period not beyond six months from the estimated date of completion.

(b) If the proceeds of the bonds, because of error or otherwise, shall be less than the cost of the property or undertaking for which authorized, additional bonds may be issued to provide the amount of such deficit and such additional bonds shall be considered to be of the same issue and shall be entitled to payment from the same fund without preference or priority over the bonds first authorized and issued.

(c) If the proceeds of the bonds shall exceed the cost of the property or undertaking, the surplus shall be converted into the fund thereon.
§8-19-12a. Lien for delinquent service rates and charges; notice of delinquency; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) Whenever any rates and charges for water services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided, shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid: Provided, That in the event the user is a tenant, the property owner shall be given notice of any said delinquency by certified mail, return receipt requested, and the user shall be given such notice by first-class mail: Provided, however, That failure of the user to cure the delinquency within a thirty-day period after receipt of such notice shall constitute grounds to terminate the user's lease of the premises concerned.

(b) All rates or charges for water service whenever delinquent, as provided by ordinance of the municipality or order of the county commission, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality or county commission shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That a municipality or county commission shall have exhausted all remedies available against such delinquent users before it may proceed in a civil action against the owner.

(c) Municipalities and county commissions are hereby granted a deferral of filing fees or other fees and costs

*Clerk's Notes: §8-19-12a was also amended by H. B. 4061 (Chapter 140), which passed subsequent to this act.
incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality or county commission collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality or county commission shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(d) No municipality or county commission may foreclose upon the premises served by it for delinquent rates or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county or the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality or county commission had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or county commission or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

§8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges.

Any such municipality or county commission shall also have plenary power and authority, and may covenant with the holders of any bonds issued here-under, to shut off and discontinue the supplying of the water or electric power service of said waterworks or electric power system for the nonpayment of the rates or charges for said water or electric power service.


Whenever any municipality or county commission shall now or hereafter own and operate a waterworks or electric power system, whether acquired, constructed, established, extended or equipped under the provisions
of this article or not, and shall desire to construct
additions, betterments or improvements thereto, it may
issue revenue bonds under the provisions of this article
to pay for the same, and the procedure therefor,
including the fixing of rates or charges and the
computation of the amount thereof, and the power and
authority in connection therewith, shall be the same as
in this article provided for the issuance of bonds for the
acquisition, construction, establishment, extension or
equipment of a waterworks system or electric power
system in a municipality or county which has not
heretofore owned and operated a waterworks or electric
power system: Provided, That nothing in this article
shall be construed as authorizing any municipality or
county commission to impair or commit a breach of the
obligation of any valid lien or contract created or
entered into by it, the intention being to authorize the
pledging, setting aside and segregation of such revenues
for the construction of such additions, betterments or
improvements only where and to the extent consistent
with outstanding obligations of such municipality or
county commission, and in accordance with the provi-
sions of this article.


Any municipality or county commission operating a
waterworks or electric power system under the provi-
sions of this article shall set up and maintain a proper
system of accounts in accordance with the requirements
of the public service commission, showing the amount
of revenues received from such waterworks or electric
power system and the application of the same. At least
once each year such municipality or county commission
shall cause such accounts to be properly audited, and a
report of such audit shall be open to the public for
inspection at all reasonable times.

§8-19-16. Protection and enforcement of rights of bond-
holders, etc.; receivership.

Any holder of any bonds issued under the provisions
of this article or of any coupons representing interest
accrued thereon may by civil action, mandamus or other
proper proceeding enforce the statutory mortgage lien
created and granted in section eight of this article,
protect and enforce any and all rights granted here-
under or under any such ordinance, order or trust
indenture, and may enforce and compel performance of
all duties required by the provisions of this article or
by any such ordinance, order or trust indenture to be
performed by the municipality or county commission, or
by the governing body or any officer, including the
making and collecting of reasonable and sufficient rates
or charges for services rendered by the waterworks or
electric power system. If there be default in the payment
of the principal of or interest upon any of such bonds,
or of both principal and interest, any court having
jurisdiction shall appoint a receiver to administer said
waterworks or electric power system on behalf of the
municipality or county commission, and the bondholders
or trustee, or both, with power to charge and collect
rates or charges sufficient to provide for the retirement
of the bonds and pay the interest thereon, and for the
payment of the repair, maintenance and operation
expenses, and such receiver shall apply the revenues in
conformity with the provisions of this article and the
ordinance or order pursuant to which such bonds have
been issued or any trust indenture, or both.

PART V. GRANTS, LOANS, ADVANCES AND AGREEMENTS;
CUMULATIVE AUTHORITY.


As an alternative to, or in conjunction with, the
issuance of revenue bonds authorized by this article, any
municipality or county commission is hereby empow-
ered and authorized to accept loans or grants and
procure loans or temporary advances evidenced by notes
or other negotiable instruments issued in the manner,
and subject to the privileges and limitations, set forth
with respect to bonds authorized to be issued under the
provisions of this article, or otherwise enter into
agreement, including, but not limited to, agreements of
indemnity, assurance or guarantee with respect to, and
for the purpose of financing part or all of, the cost of
acquisition, construction, establishment, extension or
equipment of waterworks or electric power systems and
the construction of additions, betterments and improve-
ments to existing waterworks systems or to existing
electric power systems, and for the other purposes
herein authorized, from or with any authorized agency
of the state or from the United States of America or any
federal or public agency or department of the United
States or any private agency, corporation or individual,
which loans or temporary advances, including the
interest thereon, or the municipality's or county's
financial obligations contained in such other agree-
ments, which need not bear interest, may be repaid out
of the proceeds of bonds authorized to be issued under
the provisions of this article, the revenues of or proceeds
from the said waterworks system or electric power
system or grants to the municipality or county commis-
sion from any agency of the state or from the United
States of America or any federal or public agency or
department of the United States or any private agency,
corporation or individual or from any combination of
such sources of payment, and may be secured in the
manner provided in sections eight, nine and sixteen of
this article to secure bonds issued under the provisions
of this article, but shall not otherwise be subject to the
requirements of sections eleven and twelve of this
article, and to enter into the necessary contracts and
agreements to carry out the purposes hereof with any
agency of the state, the United States of America or any
federal or public agency or department of the United
States, or with any private agency, corporation or
individual.

In no event shall any such loan or temporary advance
or agreement be a general obligation of the municipality
or county and such loans or temporary advances or
agreements, including the interest thereon, shall be paid
solely from the sources specified in this section.

§8-19-18. Additional and alternative method for con-
structing or improving and for financing
waterworks or electric power system; cu-
mulative authority.

This article shall, without reference to any other
statute or charter provision, be deemed full authority for.
the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to a waterworks or electric power system or for the construction of any additions, betterments, improvements, repairs, maintenance or operation of or to an existing electric power system as herein provided and for the issuance and sale of the bonds or the alternative methods of financing by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds or the alternative methods of financing under the provisions of this article and no publication of any resolution, ordinance, order, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds or the alternative methods of financing shall be required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the state division of health shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto.

PART VI. OPERATION BY BOARD; CONSTRUCTION.

§8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.

As an alternative to the procedures hereinabove provided, any municipality or county commission is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a waterworks or an electric power system or to construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, whether acquired,
constructed, established, extended or equipped under
the provisions of this article or not, and to collect the
revenues therefrom for the services rendered thereby,
through the supervision and control of a committee, by
whatever name called, composed of all or a portion of
the governing body, or of a board or commission
appointed by such governing body, as may be provided
by the governing body, and if such alternative is
followed, said committee, board or commission shall
have and be limited to all the powers, authority and
duties granted to and imposed upon a board as provided
in article sixteen of this chapter.

§8-19-20. Article to be liberally construed.

This article is necessary for the public health, safety
and welfare and shall be liberally construed to effectu-
ate its purposes.

CHAPTER 142

(Com. Sub. for H. B. 2655—By Delegate Wooton)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to presentation of a flag of the United States to a person designated to direct disposition of the remains of a decedent who has completed an obligatory period of service in the national guard, and who has not been dishonorably discharged, and who is not otherwise eligible to receive such flag; providing that such flag shall be used for burial; and providing for the presentation of a flag to the parent or spouse of such decedent.

Be it enacted by the Legislature of West Virginia:

That article one-b, 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 twenty-three, to read as follows:
ARTICLE 1B. NATIONAL GUARD.

§15-1B-23. American flag for burial of deceased members of the national guard; presentation of flag to parent or spouse.

(a) The adjutant general shall pay the necessary expenses for the presentation of a flag of the United States with care to the person designated to direct disposition of the remains of a deceased person who served in a federally recognized unit of the national guard of this state, upon request of such designated person, if the deceased member of the national guard has not been dishonorably discharged from service as provided for in section nine of this article, and if such deceased person is not otherwise eligible to receive such flag under any other provision of the laws of this state or federal law. Such flag shall be provided in order that the casket of the deceased person may be draped in a flag of the United States.

(b) After the burial of the deceased member, the flag so furnished pursuant to subsection (a) of this section shall be given to the parent or parents or to the spouse or children of the deceased person. If no claim is made by a parent or spouse for the flag furnished under subsection (a), the flag may be given, upon request, to a close friend or associate of the deceased member.

(c) For the purposes of this section, the term “parent” includes a natural parent, a step-parent, a parent by adoption or a person who for a period of not less than one year before the death of the decedent stood in loco parentis to him, and preference under this clause shall be given to the persons who exercised a parental relationship at the time of, or most nearly before, the death of the decedent.
thousand nine hundred thirty-one, as amended, relating to sales of public land to federal or state entities for less than fair market value.

Be it enacted by the Legislature of West Virginia:

That section four, article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended to read as follows:

ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.

§20-1A-4. Public land corporation to conduct sales of public lands by competitive bidding, modified competitive bidding or direct sale.

(a) Sales, exchanges or transfers of public lands under this article shall be conducted under competitive bidding procedures. However, where the secretary determines it necessary and proper in order to assure the following public policies, including, but not limited to, a preference to users, lands may be sold by modified competitive bidding or without competitive bidding. In recognizing public policies, the secretary shall give consideration to the following potential purchasers:

(1) The local government entities which are in the vicinity of the lands; and

(2) Adjoining landowners.

(b) The policy for selecting the methods of sale is as follows:

(1) Competitive sale is the general procedure for sales of public lands and shall be used in the following circumstances:

(A) Wherever in the judgment of the secretary the lands are accessible and usable regardless of adjoining land ownership; or

(B) Wherever the lands are within a developing or urbanizing area and land values are increasing due to the location of the land and interest on the competitive market.

(2) Modified competitive sales may be used to permit
the adjoining landowner or local governmental entity to
meet the high bid at the public sale. Lands otherwise
offered under this procedure would normally be public
lands not located near urban expansion areas, or not
located near areas with rapidly increasing land values,
and where existing use of adjacent lands would be
jeopardized by sale under competitive bidding
procedures.

(3) Direct sale may be used when the lands offered for
sale are completely surrounded by lands in one owner-
ship with no public access, or where the lands are
needed by local governments.

(4) In no event shall lands be offered for sale by
"modified competitive sales" or "direct sale" unless and
until the corporation makes a written finding of
justification for use of an alternative bidding procedure.

(5) Subject to the bidding procedures set forth herein,
the corporation is authorized, at its discretion, to sell
public lands subject to rights-of-way, restrictive coven-
ants or easements retained by the corporation, limiting
the use of such lands to purposes consistent with the use
of adjoining or nearby lands owned by the corporation.

(c) When lands have been offered for sale by one
method of sale and the lands remain unsold, then the
lands may be reoffered by another method of sale.

(d) Except as provided herein, public lands may not
be sold, exchanged or transferred by the corporation for
less than fair market value. Fair market value shall be
determined by an appraisal made by an independent
person or firm chosen by the public land corporation.
The appraisal shall be performed using the principles
contained in the "Uniform Appraisal Standards for
Federal Land Acquisitions" published under the auspi-
ces of the Interagency Land Acquisition Conference,
United States Government Printing Office, 1972:
Provided, That public lands may be sold, exchanged or
transferred to any federal agency or to the state or any
of its political subdivisions for less than fair market
value if, upon a specific written finding of fact, the
corporation determines that such a transfer would be in the best interests of the corporation and the state.

(e) The corporation may reject all bids when such bids do not represent the corporation’s considered value of the property exclusive of the fair market value.

(f) The corporation shall promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, regarding procedures for conducting public land sales by competitive bidding, modified competitive bidding and direct sales.

CHAPTER 144

(Com. Sub. for S. B. 298—By Senator Burdette, Mr. President, By Request)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c, relating to an interstate wildlife violator compact.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INTERSTATE WILDLIFE VIOLATOR COMPACT.

§20-2C-1. Governor’s authority to execute.

§20-2C-2. When and how compact becomes operative.


§20-2C-1. Governor’s authority to execute.

1 The governor of West Virginia, on behalf of this state, is hereby authorized to execute a compact in substantially the following form with any one or more of the states of the United States and the Legislature hereby signifies in advance its approval and ratification of such compact:
ARTICLE I. FINDINGS AND DECLARATION OF POLICY AND PURPOSE.

1 (a) The participating states find that:

2 (1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

3 (2) The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statues, rules, regulations and ordinances relating to the management of such resources.

4 (3) The preservation, protection, management and restoration of wildlife resources contributes immeasurably to the aesthetic, recreational and economic values of a state.

5 (4) Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management and restoration statutes, rules, regulations and ordinances of the participating states as a condition precedent to the continuance or issuance of any license to hunt, trap, fish or otherwise possess wildlife.

6 (5) The violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of people and property.

7 (6) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the participating states.

8 (7) In most instances, a person who is cited for a wildlife violation in a state other than his home state is required to post collateral or a bond to secure appearance for trial at a later date, is taken into custody until the collateral or bond is posted or is taken directly to court for an immediate appearance.

9 (8) The purpose of the aforementioned enforcement practices is to ensure compliance with the terms of the wildlife citation by the cited person who, if permitted
to continue on his way after receiving the citation, could
return to his home state and disregard his duty under
the terms of the citation.

(9) In most instances, a person receiving a wildlife
citation in his home state is permitted to accept the
citation from the officer at the scene of the violation and
immediately continue on his way after agreeing or being
instructed to comply with the terms of the citation.

(10) The aforementioned enforcement practices cause
unnecessary inconvenience and, at times, a hardship for
the person who is unable at the time to post collateral,
furnish a bond, stand trial or pay a fine and thus is
compelled to remain in custody until some alternative
arrangement is made.

(11) The aforementioned enforcement practices con-
sume an undue amount of law-enforcement time.

(b) It is the policy of the participating states to:

(1) Promote compliance with the statutes, rules,
regulations and ordinances relating to the management
of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license
privileges of any person whose license privileges have
been suspended by a participating state and treat such
suspension as if it occurred in their state.

(3) Allow a violator, except as provided in subsection
(b) of article III of this compact, to accept a wildlife
citation and, without delay, proceed on his way regard-
less of his state of residence: Provided, That the
violator's home state is party to this compact.

(4) Report to the appropriate participating state, as
provided in the compact manual, any conviction re-
corded against any person whose home state was not the
issuing state.

(5) Allow the home state to recognize and treat
convictions recorded against its residents which oc-
curred in a participating state as though they had
occurred in the home state.
(6) Extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state.

(7) Maximize the effective use of law-enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which participating states may join in a reciprocal program to effectuate the policies enumerated in subsection (b) of article I of this compact in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator’s right to due process and the sovereign status of a participating state.

ARTICLE II. DEFINITIONS.

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

(a) “Citation” means any summons, complaint, summons and complaint, ticket, penalty assessment or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation which contains an order requiring the person to respond.

(b) “Collateral” means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) “Compliance” with respect to a citation means the act of answering a citation through an appearance in a court or tribunal or through the payment of fines, costs and surcharges, if any.

(d) “Conviction” means a conviction, including any court conviction, for any offense related to the preservation, protection, management or restoration of wildlife which is prohibited by state statute, rule, regulation or
ordinance. The term "conviction" shall also include the
forfeiture of any bail, bond or other security deposited
to secure appearance by a person charged with having
committed any such offense, the payment of a penalty
assessment, a plea of nolo contendere or the imposition
of a deferred or suspended sentence by the court.

(e) "Court" means a court of law, including magis-
trate's court.

(f) "Home state" means the state of primary residence
of a person.

(g) "Issuing state" means the participating state
which issues a wildlife citation to the violator.

(h) "License" means any license, permit or other
public document which conveys to the person to whom
it was issued the privilege of pursuing, possessing or
taking any wildlife regulated by statute, rule, regulation
or ordinance of a participating state.

(i) "Licensing authority" means the governmental
agency within each participating state that is authorized
by law to issue or approve licenses or permits to hunt,
trap, fish or otherwise possess wildlife.

(j) "Participating state" means any state which enacts
legislation to become a member of this wildlife compact.

(k) "Personal recognizance" means an agreement by
a person made at the time of issuance of the wildlife
citation that such person will comply with the terms of
the citation.

(l) "State" means any state, territory or possession of
the United States, including the District of Columbia
and the Commonwealth of Puerto Rico.

(m) "Suspension" means any revocation, denial or
withdrawal of any or all license privileges, including the
privilege to apply for, purchase or exercise the benefits
conferred by any license.

(n) "Terms of the citation" means those conditions and
options expressly stated upon the citation.

(o) "Wildlife" means all species of animals including,
but not limited to, mammals, birds, fish, reptiles, amphibians, mollusks and crustaceans which are defined as "wildlife" and are protected or otherwise regulated by statute, rule, regulation or ordinance in a participating state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on the law in the issuing state.

(p) "Wildlife law" means any statute, rule, regulation or ordinance developed and enacted for the management of wildlife resources and the uses thereof.

(q) "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.

(r) "Wildlife violation" means any cited violation of a statute, rule, regulation or ordinance developed and enacted for the management of wildlife resources and the uses thereof.

ARTICLE III. PROCEDURES FOR ISSUING STATE.

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require such person to post collateral to secure appearance, subject to the exceptions noted in subsection (b) of article III of this compact, if the officer receives the recognizance of such person that he will comply with the terms of the citation.

(b) Personal recognizance is acceptable if not prohibited by law in the issuing state or by the compact manual and if the violator provides adequate proof of identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain information as specified
in the compact manual as minimum requirements for
effective processing by the home state.

(d) Upon receipt of the report of conviction or
noncompliance pursuant to subsection (c) of article III
of this compact, the licensing authority of the issuing
state shall transmit to the licensing authority of the
home state of the violator the information in form and
content as prescribed in the compact manual.

ARTICLE IV. PROCEDURES FOR HOME STATE.

(a) Upon receipt of a report from the licensing
authority of the issuing state reporting the failure of a
violator to comply with the terms of a citation, the
licensing authority of the home state shall notify the
violator and shall initiate a suspension action in
accordance with the home state's suspension procedures
and shall suspend the violator's license privileges until
satisfactory evidence of compliance with the terms of the
wildlife citation has been furnished by the issuing state
to the home state licensing authority. Due process
safeguards shall be accorded.

(b) Upon receipt of a report of conviction from the
licensing authority of the issuing state, the licensing
authority of the home state shall enter such conviction
in its records and shall treat such conviction as though
it occurred in the home state for the purposes of the
suspension of license privileges.

(c) The licensing authority of the home state shall
maintain a record of actions taken and shall make
reports to issuing states as provided in the compact
manual.

ARTICLE V. RECIPROCAL RECOGNITION OF SUSPENSION.

(a) All participating states shall recognize the suspen-
sion of license privileges of any person by any partic-
ipating state as though the violation resulting in the
suspension had occurred in their state and could have
been the basis for suspension of license privileges in
their state.

(b) Each participating state shall communicate
ARTICLE VI. APPLICABILITY OF OTHER LAWS.

Except as expressly required by the provisions of this compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

ARTICLE VII. BOARD OF COMPACT ADMINISTRATORS.

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the participating states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in accordance with the laws of the state he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate shall not be entitled to serve unless written notification of his identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of the board’s votes are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the participating states are represented.

(c) The board shall elect annually from its membership a chairman and vice-chairman.

(d) The board shall adopt bylaws not inconsistent with the provisions of this compact or the laws of a partic-
ipating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations and grants of moneys, equipment, supplies, materials and services, conditional or otherwise, from any state and may receive, utilize and dispose of same.

(f) The board may contract with or accept services of personnel from any governmental or intergovernmental agency, individual, firm or corporation or from any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

ARTICLE VIII. ENTRY INTO COMPACT AND WITHDRAWAL.

(a) This compact shall become effective at such time as it is adopted in a substantially similar form by two or more states.

(b) (1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairman of the board.

(2) The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:

(A) A citation of the authority from which the state is empowered to become a part to this compact;

(B) An agreement of compliance with the terms and provisions of this compact; and

(C) An agreement that compact entry is with all states participating in the compact and with all additional states legally becoming a party to the compact.

(3) The effective date of entry shall be specified by the applying state but shall not be less than sixty days after
notice has been given by the chairman of the board of compact administrators or by the secretariat of the board of each participating state that the resolution from the applying state has been received.

(c) A participating state may withdraw from this compact by official written notice to each member state but withdrawal shall not become effective until ninety days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal of any state shall affect the validity of this compact as to the remaining participating states.

ARTICLE IX. AMENDMENTS TO THE COMPACT.

(a) This compact may be amended from time to time. Each proposed amendment shall be presented in resolution form to the chairman of the board of compact administrators and shall be initiated by one or more participating states.

(b) Adoption of an amendment shall require endorsement by all participating states and shall become effective thirty days after the date of the last endorsement.

(c) Failure of a participating state to respond to the compact chairman within one hundred twenty days after receipt of a proposed amendment shall constitute endorsement thereof.

ARTICLE X. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, individual or circumstance is held invalid, the validity of the remainder of this compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full
force and effect as to the participating state affected as to all severable matters.

§20-2C-2. When and how compact becomes operative.

1 When the governor shall have executed said compact on behalf of this state and shall have caused a verified copy thereof to be filed with the secretary of state and when said compact shall have been ratified by one or more other states, then said compact shall become operative and effective between this state and such other state or states. The governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents between this state and any other state ratifying said compact.


1 The compact administrator representing this state, as provided for in article VII of the Interstate Wildlife Violator Compact, shall not be entitled to any additional compensation for his duties and responsibilities as said administrator but shall be entitled to reimbursement for reasonable expenses actually incurred in connection with his duties and responsibilities as said administrator in the same manner as for expenses incurred in connection with other duties and responsibilities of his office or employment.

CHAPTER 145

(Com. Sub. for S. B. 44—By Senators Spears, Jones and J. Manchin)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four, relating to limiting the tort liability of persons organizing, promoting, presenting or providing equestrian activities or providing facilities for equestrian activities; describing legislative purpose; defining
certain terms; describing the duties of horsemen; describing the duties of persons who are participants in equestrian activities; providing for the liability of horsemen; providing for the liability of participants; and exempting the horse racing industry from the provisions of said article four.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. EQUESTRIAN ACTIVITIES RESPONSIBILITY ACT.

§20-4-1. Legislative purpose.

1 The Legislature finds that equestrian activities are engaged in by a large number of citizens of West Virginia and that such activities also attract to West Virginia a large number of nonresidents, significantly contributing to the economy of West Virginia. Since it is recognized that there are inherent risks in equestrian activities which should be understood by participants therein and which are essentially impossible for the operators of equestrian businesses to eliminate, it is the purpose of this article to define those areas of responsibility and those affirmative acts for which the operators of equestrian businesses shall be liable for loss, damage or injury suffered by participants, and to further define those risks which the participants expressly assume and for which there can be no recovery.

§20-4-2. Definitions.

1 In this article, unless a different meaning plainly is required:
"Equestrian activity" means any sporting event or other activity involving a horse or horses, including, but not limited to:

(A) Shows, fairs, competitions, performances or parades;
(B) Any of the equine disciplines such as dressage, hunter and jumper shows, grand prix jumping, three day events, combined training, rodeos, driving, western games and hunting;
(C) Rides, trips or hunts;
(D) Riding classes, therapeutic riding programs, school and college sponsored classes and programs, or other classes in horsemanship;
(E) The boarding or keeping of horses; and
(F) Providing equipment or tack.

"Horseman" or "operator of a horseman's business" means any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, and any other legal entity which engages, with or without compensation, in organizing, promoting, presenting or providing equestrian activities or in providing facilities for equestrian activities.

"Horse" means each animal of the horse kind, in every class or breed of horses, and, without limitation or exception, all members of the genus *Equus* and family *Equidae*.

"Participant" means any person using the services or facilities of a horseman so as to be directly involved in an equestrian activity.

§20-4-3. Duties of horsemen.

Every horseman shall:

(1) Make reasonable and prudent efforts to determine the ability of a participant to safely engage in the equestrian activity, to determine the ability of the horse...
to behave safely with the participant, and to determine
the ability of the participant to safely manage, care for
and control the particular horse involved;

(2) Make known to any participant any dangerous
traits or characteristics or any physical impairments or
conditions related to a particular horse which is involved
in the equestrian activity of which the horseman knows
or through the exercise of due diligence could know;

(3) Make known to any participant any dangerous
condition as to land or facilities under the lawful
possession and control of the horseman of which the
horseman knows or through the exercise of due dili-
gence could know, by advising the participant in writing
or by conspicuously posting warning signs upon the
premises;

(4) In providing equipment or tack to a participant,
make reasonable and prudent efforts to inspect such
equipment or tack to assure that it is in proper working
condition and safe for use in the equestrian activity;

(5) Prepare and present to each participant or
prospective participant, for his or her inspection and
signature, a statement which clearly and concisely
explains the liability limitations, restrictions and
responsibilities set forth in this article.

§20-4-4. Duties of participants.

It is recognized that equestrian activities are hazard-
ous to participants, regardless of all feasible safety
measures which can be taken.

Each participant in an equestrian activity expressly
assumes the risk of and legal responsibility for any
injury, loss or damage to person or property which
results from participation in an equestrian activity.
Each participant shall have the sole individual respon-
sibility for knowing the range of his or her own ability
to manage, care for, and control a particular horse or
perform a particular equestrian activity, and it shall be
the duty of each participant to act within the limits of
the participant's own ability, to maintain reasonable
control of the particular horse or horses at all times
while participating in an equestrian activity, to heed all posted warnings, to perform equestrian activities only in an area or in facilities designated by the horseman and to refrain from acting in a manner which may cause or contribute to the injury of anyone. If while actually riding in an equestrian event, any participant collides with any object or person, except an obviously intoxicated person of whom the horseman is aware, or if the participant falls from the horse or from a horse-drawn conveyance, the responsibility for such collision or fall shall be solely that of the participant or participants involved and not that of the horseman.

A participant involved in an accident shall not depart from the area or facility where the equestrian activity took place without leaving personal identification, including name and address, or without notifying the proper authorities, or without obtaining assistance when that person knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance.

§20-4-5. Liability of horsemen.

(a) A horseman shall be liable for injury, loss or damage caused by failure to follow the duties set forth in section three of this article where the violation of duty is causally related to the injury, loss or damage suffered. A horseman shall not be liable for any injury, loss or damage caused by the negligence of any person who is not an agent or employee of such horseman.

(b) A horseman shall be liable for acts or omissions which constitute gross negligence or willful and wanton conduct which is the proximate cause of injury to a participant.

(c) A horseman shall be liable for an intentional injury which he or she inflicts upon a participant.

(d) Every horseman shall carry public liability insurance in limits of no less than one hundred thousand dollars per person, three hundred thousand dollars per occurrence and ten thousand dollars for property damage.
§20-4-6. Liability of participants.

1 Any participant shall be liable for injury, loss or damage resulting from violations of the duties set forth in section four of this article.

§20-4-7. Applicability of article.

1 The provisions of this article do not apply to the horse racing industry that is regulated by the provisions of article twenty-three, chapter nineteen of this code.

CHAPTER 146

(Com. Sub. for S. B. 149—By Senators Brackenrich, Parker, Chernenko and Hawse)

[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, further defining the term “other wastes” in the water pollution control act.

Be it enacted by the Legislature of West Virginia:

That section two, article five-a, 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 5A. WATER POLLUTION CONTROL ACT.


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

3 (a) “Director” shall mean the director of the division of natural resources;

5 (b) “Board” shall mean the state water resources board;

7 (c) “Chief” shall mean the chief of the section of water resources of the division of natural resources;
(d) "Person", "persons" or "applicant" shall mean any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever;

(e) "Water resources", "water" or "waters" shall mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands;

(f) "Pollution" shall mean the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of the waters of the state;

(g) "Sewage" shall mean water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface waters as may be present;

(h) "Industrial wastes" shall mean any liquid, gaseous, solid or other waste substance, or a combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as hereinafter defined, shall also be considered "industrial wastes" within the meaning of this article;
(i) "Industrial user" shall mean those industries identified in the standard industrial classification manual, United States Bureau of the Budget, 1967, as amended and supplemented, under the category "division d—manufacturing" and other classes of significant waste producers identified under regulations issued by the board or the administrator of the United States environmental protection agency;

(j) "Other wastes" shall mean garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues resulting from secondary processing; sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, heat or all other materials and substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the state;

(k) "Establishment" shall mean an industrial establishment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced;

(l) "Sewer system" shall mean pipelines or conduits, pumping stations, force mains and all other constructions, facilities, devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes or other wastes to a point of disposal or treatment;

(m) "Treatment works" shall mean any plant, facility, means, system, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, earthen pit, incinerator, area devoted to sanitary landfills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, holding or disposing of sewage, industrial wastes or other wastes or for the purpose of regulating or controlling the quality and rate of flow thereof;
(n) "Publicly owned treatment works" shall mean any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity, for the treatment of pollutants;

(o) "Disposal system" shall mean a system for treating or disposing of sewage, industrial wastes or other wastes, or the effluent therefrom, either by surface or underground methods, and shall be construed to include sewer systems, the use of subterranean spaces, treatment works, disposal wells and other systems;

(p) "Outlet" shall mean the terminus of a sewer system or the point of emergence of any water-carried sewage, industrial wastes or other wastes, or the effluent therefrom, into any of the waters of this state, and shall include a point source;

(q) "Point source" shall mean any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock or vessel or other floating craft, from which pollutants are or may be discharged;

(r) "Activity" or "activities" shall mean any activity or activities for which a permit is required by the provisions of section five of this article;

(s) "Disposal well" shall mean any well drilled or used for the injection or disposal of treated or untreated sewage, industrial wastes or other wastes into underground strata;

(t) "Effluent limitation" shall mean any restriction established on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into the waters of this state;

(u) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as amended;

(v) "Division" shall mean the division of natural resources;

(w) "Well" shall mean any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata
127 for the extraction or injection or placement of any liquid
128 or gas, or any shaft or hole sunk or used in conjunction
129 with such extraction or injection or placement. The term
130 “well” shall not have included within its meaning any
131 shaft or hole sunk, drilled, bored or dug into the earth
132 for the sole purpose of core drilling or pumping or
133 extracting therefrom potable, fresh or usable water for
134 household, domestic, industrial, agricultural or public
135 use; and
136 (x) “Pollutant” shall mean industrial wastes, sewage
137 or other wastes as defined in this section.

CHAPTER 147
(S. B. 608—Originating in the Committee on the Judiciary)
[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six and twenty-two, article five-h, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to underground storage tank management.

Be it enacted by the Legislature of West Virginia:

That sections six and twenty-two, article five-h, 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 5H. WEST VIRGINIA UNDERGROUND STORAGE TANK ACT.


1 (a) The director has overall responsibility for the
2 promulgation of rules and regulations under this article.
3 In promulgating and revising such rules and regulations
4 the director shall comply with the provisions of chapter
twenty-nine-a of this code. Such rules and regulations shall be no more stringent than the rules and regulations promulgated by the United States environmental protection agency pursuant to Subtitle I.

(b) The director shall promulgate rules and regulations applicable to owners or operators of underground storage tanks or other affected persons, as appropriate, as follows:

(1) A requirement for a yearly registration fee for underground storage tanks;

(2) A requirement that an owner or operator register with the director each underground storage tank after the effective date of the regulations and that an owner or operator report annually on changes in status of any underground storage tank;

(3) Such release detection, prevention and correction rules applicable to underground storage tanks as may be necessary to protect human health and the environment;

(4) Requirements for maintaining a leak detection system, inventory control systems together with tank testing, or a comparable system or method designed to identify releases from underground storage tanks in a manner consistent with the protection of human health and the environment;

(5) Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(6) Regulations for procedures and amount of fees to be assessed for the underground storage tank administrative fund, the leaking underground storage tank response fund and the underground storage tank insurance fund established pursuant to this article, which shall include a capitalization fee to be assessed against all owners or operators of underground tanks to be used for initial establishment of the underground storage tank insurance fund;

(7) Procedures for making expenditures from the
(8) Acceptable methods by which an owner or operator may demonstrate financial responsibility;

(9) Requirements for reporting of releases and corrective action taken in response to a release;

(10) Requirements for taking corrective action in response to a release from an underground storage tank;

(11) Requirements for the closure of tanks to prevent future releases of regulated substances to the environment;

(12) Requirements for certification of installation, removal, retrofit, testing and inspection of underground storage tanks and leak detection systems by a registered professional engineer or other qualified person;

(13) Requirements for public participation in the enforcement of the state underground storage tank program;

(14) Procedures establishing when and how the director shall determine if information obtained by any agency under this article is confidential;

(15) Standards of performance for new underground storage tanks; or

(16) Any other rules, regulations or standards necessary and appropriate for the effective implementation and administration of this article.


(a) The director may establish an underground storage tank insurance fund for the purpose of satisfying the financial responsibility requirements established pursuant to section ten of this article. In addition to the capitalization fee to be assessed against all owners or operators of underground storage tanks provided by subdivision (6), subsection (b), section six of this article, the director shall promulgate rules and regulations establishing an annual financial responsibility assess-
ment to be assessed on and paid by owners or operators of underground storage tanks who are unable to obtain insurance or otherwise meet the financial responsibility requirements established pursuant to section ten of this article. Such assessments shall be paid into the state treasury into a special fund designated “the underground storage tank insurance fund”.

(b) At the end of each fiscal year, any unexpended balance of such assessment shall not be transferred to the general revenue fund but shall remain in the underground storage tank insurance fund.

CHAPTER 148
(S. B. 277—By Senator Burdette, Mr. President, By Request)
[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections twelve and thirteen, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fifty-seven, article two, chapter twenty of said code, relating to the negligent shooting, wounding or killing of a human being or livestock while hunting and the penalty therefor; and shooting across a road or near a building or crowd and the penalty therefor.

Be it enacted by the Legislature of West Virginia:

That sections twelve and thirteen, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section fifty-seven, article two, chapter twenty of said code be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-57. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.

1 It shall be unlawful for any person, while engaged in hunting or pursuing wild animals, wild birds or wild fowl, carelessly or negligently to shoot, wound or kill any
human being, or any livestock, or destroy or injure any
other chattels or property.

It is unlawful for any person, while engaged in
hunting, pursuing, taking or killing wild animals or
wild birds, to carelessly or negligently shoot, wound or
kill any human being or livestock, or to destroy or injure
any other chattels or property.

Any person who, in the act of hunting, pursuing,
taking or killing of wild animals or wild birds, in any
manner injures any person or property shall file with
the director a full description of the accident or other
casualty, including such information as the director may
require. Such report must be filed during a period not
to exceed seventy-two hours following such incident.

Any person violating this section shall be deemed
guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not exceeding one thousand dollars, and,
in the discretion of the court trying the case, may in
addition thereto be confined in the county jail for a
period not exceeding one year.

Any person violating this section is guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than one thousand dollars nor more than
ten thousand dollars, or imprisoned in the county jail not
more than one year, or both fined and imprisoned.
Restitution of the value of the livestock, chattel or
property injured or destroyed shall be required upon
conviction.

CHAPTER 149
(H. B. 4664—By Delegate Farley)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article one,
chapter five of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to
officers, boards and commissions; how costs are paid;
and how costs of confinement are paid for extradition
expenses incurred.
Be it enacted by the Legislature of West Virginia:

That section twelve, article one, 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 1. THE GOVERNOR.

§5-1-12. How costs paid; complainant responsible for.

1 When the punishment of the crime shall be the confinement of the criminal in the penitentiary, expenses incurred shall be paid from funds available to the division of corrections. In all other cases such expenses shall be paid out of the county treasury of the county wherein the crime is alleged to have been committed.

2 The complainant in each case is answerable for all the actual costs and charges, and for the support in prison of any person so committed; and, if the charge for his or her support in prison shall not be paid when demanded, the jailer may discharge such person from prison.

CHAPTER 150

(Com. Sub. for H. B. 4706—By Delegates Riggs and Farmer)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three-b, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to journeyman electricians licenses; requirements; and allowing graduates of approved vocational education programs to take the journeyman electrician’s test and if successful, to be granted a license.

Be it enacted by the Legislature of West Virginia:

That section four, article three-b, 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 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal.

(a) The following three classes of license may be issued by the state fire marshal: "Master electrician license," "journeyman electrician's license" and "apprentice electrician license."

(b) The state fire marshal shall issue the appropriate class of license to a person, firm or corporation upon a finding that such person, firm or corporation possesses the qualifications for the class of license to be issued.

(c) The qualifications for each class of license to be issued are as follows:

(1) For a “master electrician license” a person must have five years of experience in electrical work of such breadth, independence and quality that such work indicates that the applicant is competent to perform all types of electrical work and can direct and instruct journeyman electricians and apprentice electricians in the performance of electrical work. Such applicant, or a member of a firm or an officer of a corporation if the applicant be a firm or corporation, must also pass the master electrician examination given by the state fire marshal with a grade of eighty percent correct or better.

(2) For a “journeyman electrician's license,” a person must have at least two years of experience in performing electrical work under the direction or instruction of a master electrician or must have completed a formal apprentice program, or a vocational education program of at least one thousand eighty hours in length and approved by the state board of education or its successor, providing actual electrical work experience and training conducted by one or more master electricians. Such applicant must also pass the journeyman electrician's examination given by the state fire marshal with a grade of eighty percent correct or better.
(3) For an "apprentice electrician license," a person must pass the apprentice electrician's examination given by the state fire marshal with a grade of eighty percent correct or better.

(d) (1) Certificates of license for a master electrician's license issued by the state fire marshal shall specify the name of the person, firm or corporation so qualifying and the name of the person, who in the case of a firm shall be one of its members and in the case of a corporation shall be one of its officers, passing the master electrician examination.

(2) Licenses issued to journeyman electricians and apprentice electricians shall specify the name of the person who is thereby authorized to perform electrical work or, in the case of apprentice electricians, to work with other classes of electricians to perform electrical work.

(e) No license issued under this article is assignable or transferable.

(f) All licenses issued by the state fire marshal shall expire on the thirtieth day of June following the year of issue or renewal.

(g) (1) Each expiring license may be renewed without need for examination and without limit as to the number of times renewed, for the same class of license previously issued and for the same person, firm or corporation to whom it was originally issued upon payment to the state fire marshal of a renewal fee of fifty dollars if such application for renewal and payment of such fee is made before the date of expiration of the license.

(2) In the case of a failure to renew a license on or before the thirtieth day of June the person named in the license may, upon payment of the renewal fee and an additional fee of fifteen dollars, receive from the state fire marshal a deferred renewal of such license which shall expire on the thirtieth day of June in the ensuing year. No person, firm or corporation may perform electrical work upon expiration of such person's, firm's or corporation's license until a deferred renewal for such
73 license is issued by the state fire marshal even if such
74 person, firm or corporation has applied for the deferred
75 renewal of such license.

CHAPTER 151
(Com. Sub. for H. B. 4131—By Delegates B. Hatfield and White)

[Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Medical Practice Act and the records of the board of medicine; eliminating the confidentiality of certain records and the criminal penalty for violations of the same; providing a method to encourage physicians, podiatrists and physician assistants to voluntarily seek treatment of an alcohol or chemical dependency; and providing that one voluntary agreement to seek treatment shall be confidential and not available to public access or discovery.

Be it enacted by the Legislature of West Virginia:

That section nine, article three, 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 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-9. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.

(a) The board shall maintain a permanent record of the names of all physicians, podiatrists, and physician assistants, licensed, certified, or otherwise lawfully practicing in this state, and of all persons applying to be so licensed to practice, along with an individual historical record for each such individual containing reports and all other information furnished the board
under this article or otherwise. Such record may include, in accordance with rules established by the board, additional items relating to the individual's record of professional practice that will facilitate proper review of such individual's professional competence.

(b) Upon a determination by the board that any report submitted to it is without merit, the report shall be expunged from the individual's historical record.

(c) A physician, podiatrist, physician assistant, or applicant, or authorized representative thereof, has the right, upon request, to examine his or her own individual historical record maintained by the board pursuant to this article and to place into such record a statement of reasonable length of his or her own view of the correctness or relevance of any information existing in such record. Such statement shall at all times accompany that part of the record in contention.

(d) A physician, podiatrist, physician assistant or applicant has the right to seek through court action the amendment or expungement of any part of his or her historical record.

(e) A physician, podiatrist, physician assistant or applicant shall be provided written notice within thirty days of the placement and substance of any information in his individual historical record that pertains to him and that was not submitted to the board by him.

(f) Except for information relating to biographical background, education, professional training and practice, a voluntary agreement entered into pursuant to subsection (h) of this section, prior disciplinary action by any entity, or information contained on the licensure application, the board shall expunge information in an individual's historical record unless it has initiated a proceeding for a hearing upon such information within two years of the placing of the information into the historical record.

(g) Orders of the board relating to disciplinary action against a physician, podiatrist, or physician assistant are public information.
(h) (1) In order to encourage voluntary reporting of alcohol or other chemical dependency impairment and in recognition of the fact that alcoholism and chemical dependency are illnesses, a physician, podiatrist, or physician assistant licensed, certified, or otherwise lawfully practicing in this state may enter into a voluntary agreement with the board reporting his or her participation in a chemical dependency or alcohol treatment program or reporting an alcohol or chemical dependency impairment to the board and seek treatment for his or her dependency. Pursuant to said agreement the board shall impose limitations on the practice of said physician, podiatrist, or physician assistant.

(2) Any voluntary agreement entered into pursuant to this subsection shall not be considered a disciplinary action or order by the board and shall not be public information if:

(A) Such voluntary agreement is the result of the physician, podiatrist, or physician assistant reporting to the board his or her participation in a chemical dependency or alcohol treatment program or reporting to the board his or her alcohol or chemical dependency impairment and requesting such an agreement for the purpose of seeking treatment; and

(B) The board has not received nor filed any written complaints regarding said physician, podiatrist, or physician assistant relating to an alcohol or chemical dependency impairment affecting the care and treatment of patients, nor received any reports pursuant to subsection (b), section fourteen of this article relating to an alcohol or chemical dependency impairment.

(3) If any physician, podiatrist, or physician assistant enters into a voluntary agreement with the board pursuant to this subsection and then fails to comply with or fulfill the terms of said agreement, the board shall initiate disciplinary proceedings pursuant to subsection (a), section fourteen of this article.

(4) If the board has not instituted any disciplinary proceeding as provided for in this article, any information received, maintained, or developed by the board relating
to the alcohol or chemical dependency impairment of any physician, podiatrist or physician assistant and any voluntary agreement made pursuant to this subsection shall be confidential and not available for public information, discovery, or court subpoena, nor for introduction into evidence in any medical professional liability action or other action for damages arising out of the provision of or failure to provide health care services.

In the board's annual report of its activities to the Legislature required under section seven of this article, the board shall include information regarding the success of the voluntary agreement mechanism established therein: Provided, That in making such report the board shall not disclose any personally identifiable information relating to any physician, podiatrist, or physician assistant participating in a voluntary agreement as provided herein.

Notwithstanding any of the foregoing provisions, the board may cooperate with and provide documentation of any voluntary agreement entered into pursuant to this subsection to licensing boards in other jurisdictions, as may be appropriate.

(i) Any physician-patient privilege does not apply in any investigation or proceeding by the board or by a medical peer review committee or by a hospital governing board with respect to relevant hospital medical records, while any of the aforesaid are acting within the scope of their authority: Provided, That the disclosure of any information pursuant to this provision shall not be considered a waiver of any such privilege in any other proceeding.

CHAPTER 152

(Com. Sub. for H. B. 4134—By Delegates Louderback and Wooton)

[Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to architects; the West Virginia board of architects; definitions; fees; registration qualifications; registration renewal; certificate of registration; requiring seal; disciplinary powers of board; disciplinary proceedings; registration prima facie evidence; prohibited acts; construction administration services; exceptions; enforcement of rules by attorney general or prosecuting attorney; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article twelve, 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 12. ARCHITECTS.

§30-12-1. Board of architects.
§30-12-2. Definitions.
§30-12-3. Fees.
§30-12-4. Registration qualifications.
§30-12-5. Registration renewal.
§30-12-6. Certificate of registration.
§30-12-7. Seal.
§30-12-8. Disciplinary powers.
§30-12-9. Disciplinary proceedings.
§30-12-10. Registration; prima facie evidence.
§30-12-11. Prohibition.
§30-12-11a. Construction administration services required.
§30-12-12. Exceptions.
§30-12-13. Enforcement.
§30-12-14. Penalties.

§30-12-1. Board of architects.

1 The West Virginia board of architects, heretofore created, shall continue in existence and shall consist of seven members, five of whom shall be architects, appointed by the governor by and with the advice and consent of the Senate and two of whom shall be lay members, not of the same political party affiliation, appointed by the governor by and with the advice and consent of the Senate. Each member who is an architect shall have been engaged in the active practice of his profession in the state of West Virginia for not fewer than ten years previous to his appointment. The members of the board in office on the date this article
takes effect, in the year one thousand nine hundred ninety, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified.

The board, in addition to the authority, powers and duties granted to it by this article, has the authority to promulgate rules, pursuant to the provisions of chapter twenty-nine-a of this code. Any disciplinary proceedings held by the board shall be held in accordance with the provisions of the administrative procedures act for contested cases pursuant to the provisions of article five of chapter twenty-nine-a of this code.

Pursuant to the provisions of section four, article ten, chapter four of this code, the West Virginia board of architects shall continue to exist until the first day of July, one thousand nine hundred ninety-two.

§30-12-2. Definitions.

The following words as used in this article, unless the context otherwise requires, have the following meanings:

(1) "Architect" means any person who engages in the practice of architecture as hereinafter defined.

(2) "Board" means the West Virginia board of architects established by section one of this article.

(3) "Direct supervision" means that degree of supervision by a person overseeing the work of another person whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his or her supervision.

(4) "Good moral character" means such character as will enable a person to discharge the fiduciary duties of an architect to his client and to the public for the protection of health, safety and welfare. Evidence of inability to discharge such duties include the commission of an offense justifying discipline under section eight of this article.

(5) "Practice of architecture" means rendering or offering to render those services, hereinafter described,
in connection with the design and construction, enlargement or alteration of a building or group of buildings and the space within and surrounding such buildings, which have as their principal purpose human occupancy or habitation; the services referred to include planning, providing preliminary studies, designs, drawings, specifications and other technical submissions and administration of construction contracts.

(6) "Registered architect" means an architect holding a current registration.

(7) "Registration" means the certificate of registration issued by board.

(8) "Technical submissions" means designs, drawings, specifications, studies and other technical reports prepared in the course of practicing architecture.

§30-12-3. Fees.

(a) Notwithstanding any other provision of the law to the contrary, the board is authorized and empowered to establish a schedule of fees to be charged to applicants. The board shall charge for: Examination, reexamination, renewal of certificates, restoration of expired certificates, reciprocal registration and for any other matters deemed appropriate by the board.

(b) The board shall cause such schedule of fees to be published annually in the state register. Until such time as the board establishes otherwise, the fees previously set by statute remain in effect.

§30-12-4. Registration qualifications.

Every person applying to the board for initial registration shall submit an application accompanied by the fee established in accordance with section three of this article with satisfactory evidence that such person holds an accredited professional degree in architecture or has completed such other education as the board considers equivalent to an accredited professional degree and with satisfactory evidence that such person has completed such practical training in architectural work as the board requires. If an applicant is qualified,
the board shall, by means of a written examination, examine the applicant on such technical and professional subjects as prescribed by it. None of the examination materials are public records as defined in article one, chapter twenty-nine-b of this code. The board may exempt from such written examination an applicant who holds certification issued by the national council of architectural registration boards. The board may adopt as its own rules governing practical training and education those guidelines published from time to time by the national council of architectural registration boards. The board may also adopt the examinations and grading procedures of the national council of architectural registration board and the accreditation decisions of the national architectural accrediting board. The board shall issue its registration to each applicant who is found to be of good moral character and who satisfies the requirements set forth in this section. The registration is effective upon issuance.

§30-12-5. Registration renewal.

The board shall mail each year to every registered architect an application for renewal of registration. The application, properly filled out and accompanied by the renewal fee established in accordance with section three of this article, shall be returned to the board on or before the date established by the board. After verification of the facts stated in the renewal application, the board shall issue a registration which is valid for one year, expiring on the thirtieth day of June of each year. Any holder of a registration who fails to renew his or her application on or before the prescribed date, before again engaging in the practice of architecture within the state, is required to apply for reinstatement, pay the prescribed fee and, in circumstances considered appropriate by the board, may be required to be reexamined.

§30-12-6. Certificate of registration.

Every registered architect having a place of business or employment within the state shall display his or her certificate of registration in a conspicuous place in such place of business or employment. A new certificate of
registration, to replace a lost, destroyed or mutilated certificate, shall be issued by the board upon payment of a fee established in accordance with section three of this article and such certificate shall be stamped or marked "duplicate."

§30-12-7. Seal.

(a) Every registered architect shall have a seal of a design authorized by the board by rule. All technical submissions prepared by such architect, or under his or her direct supervision, shall be stamped with the impression of his or her seal. No architect holding a registration may impress his or her seal on any technical submissions unless they were prepared under his or her direct supervision: Provided, That in the case of the portions of such technical submissions prepared under the direct supervision of persons consulting with or employed by the architect, the architect may sign or seal those portions of the technical submission if the architect has reviewed such portions and has coordinated their preparation.

(b) No public official charged with the enforcement duties of a municipal building inspector may accept or approve any technical submissions involving the practice of architecture unless the technical submissions have been stamped as required by this section or by a registered engineer or the applicant has certified thereon the applicability of a specific exception under section twelve of this article permitting the preparation of such technical submissions by a person not registered thereunder. A building permit issued with respect to technical submissions which do not conform with the requirements of this section is invalid.

§30-12-8. Disciplinary powers.

The board may revoke, suspend or annul a registration, or impose a civil penalty in an amount not more than two thousand dollars for each violation, upon satisfactory proof to the board that any person has violated the provisions of this article or any rules promulgated by the board under this article. In hearing
matters arising under this section, the board may take into account suitable evidence of reform.

§30-12-9. Disciplinary proceedings.

Charges against any person involving any matter coming within the jurisdiction of the board shall be in writing and shall be filed with the board. Such charges, at the discretion of the board, shall be heard within a reasonable time after being so filed. The accused person has the right at such hearing to appear personally, with or without counsel, to cross-examine adverse witnesses and to produce evidence and witnesses in his or her defense. The board shall set the time and place for such hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be sent by registered mail to the accused person, at his or her latest place or residence or business known to the board, at least thirty days before such date. If after such hearing the board finds the accused person has violated any of the provisions of this article or any of the rules promulgated by the board, it may issue any order described in section eight of this article. If the board finds no such violation, then it shall enter an order dismissing the charges. If the order revokes, suspends or annuls an architect's registration, the board shall so notify, in writing, the secretary of state and the clerk of the municipality in the state wherein such architect has a place of business, if any.

The board may reissue a registration to any person whose registration has been revoked. Application for the reissuance of the registration shall be made in such a manner as the board may direct and shall be accompanied by a fee established in accordance with section three of this article.

§30-12-10. Registration; prima facie evidence.

Every registration issued and remaining in force is prima facie evidence in all courts of the state that the person named therein is legally registered as an architect for the period for which it is issued and of all other facts stated therein.
§30-12-11. Prohibition.

Except as hereinafter set forth in section twelve of this article, no person may directly or indirectly engage in the practice of architecture in the state or use the title "architect," "registered architect," "architectural designer," or display or use any words, letters, figures, titles, sign, card, advertisement or other symbol or device indicating that such person is an architect or is practicing architecture, unless he or she is registered under the provisions of this article. No person may aid or abet any person, not registered under the provisions of this chapter, in the practice of architecture.

§30-12-11a. Construction administration services required.

(a) The owner of any real property who allows a project to be constructed on such real property shall be engaged in the practice of architecture unless such owner may have employed or may have caused others to have employed a registered architect or registered engineer to furnish "construction administration services" with respect to such project.

(b) For purposes of this section, the following terms shall have the following meanings:

(1) "Building official" means the person appointed by the municipality or state subdivision having jurisdiction over the project to have principal responsibility for the safety of the project as finally built.

(2) "Construction administration services" comprises at the following services: (A) Visiting the construction site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the building permit was issued; (B) processing shop drawings, samples, and other submittals required of the contractor by the terms of construction contract documents; and (C) notifying an owner and the building official of any code violations, changes which affect code compliance, the use of any materials, assemblies, components, or equipment prohibited by a code, major or substantial changes between such
technical submissions which he or she identifies as constituting a hazard to the public, which he or she observes in the course of performing his or her duties.

(3) “Owner” means with respect to any real property and of the following persons: (A) The holder of a mortgage secured by such real property; (B) the holder, directly or indirectly, of an equity interest in such real property exceeding ten percent of the aggregate equity interests in such real property; (C) the record owner of such real property; or (D) the lessee of all or any portion of such real property when the lease covers all of that portion of such real property upon which the project is being constructed, the lessee has significant approval rights with respect to the project, and the lease, at the time the construction of the project begins, has a remaining term of not less than ten years.

(4) “Project” means the construction, enlargement, or alteration of a building, other than a building exempted by the provisions of section twelve of this article, which has as its principal purpose human occupancy or habitation.

(c) If the registered engineer or registered architect who sealed the technical submissions which were submitted to the building official at the time the building permit was issued has not been employed to furnish construction administration services at the time such registered architect or registered engineer issued such technical submissions, he or she shall note on such technical submissions that he or she has not been so employed. If he or she is not employed to furnish construction administration services when construction of the project begins, he or she shall file, not later than thirty days after such construction begins, with the board and with the building official, on a form prescribed by the board, a notice setting forth the names of the owner or owners known to him or her, the address of the project, and the name, if known to him or her, of the registered architect employed to perform construction administration services. If he or she believes that no registered architect or registered engineer has been so employed, he or she shall so state on the form.
Any registered architect or registered engineer who fails to place the note on his or her technical submissions or to file such notice, as required by this paragraph, shall have violated the provisions of this chapter and shall be subject to discipline as set forth herein.

(d) If the board determines, with respect to a particular project or class of projects, that the public is adequately protected without the necessity of a registered architect or registered engineer performing construction administrative services, the board may waive the requirements of this section with respect to such project or class of projects.

§30-12-12. Exceptions.

1 Nothing in this article may be construed to prevent:

2 (a) Any of the activities that, apart from this exemption, would constitute the practice of architecture, if performed in connection with any of the following:

3 (1) A detached single family dwelling and any sheds, storage buildings and garages incidental thereto;

4 (2) A multi-family residential structure not in excess of three stories excluding any basement area;

5 (3) Farm buildings, including barns, silos, sheds or housing for farm equipment and machinery, livestock, poultry or storage, if such structures are designed to be occupied by no more than ten persons;

6 (4) Any alteration, renovation or remodeling of a building, if such alteration, renovation or remodeling does not affect structural or other safety features of the building or if the work contemplated by the design does not require the issuance of a permit under any applicable building code;

7 (5) Preengineered buildings, including mobile classrooms purchased by county school boards; and

8 (6) A commercial structure which is to contain not more than seventy-six hundred square feet and not in excess of one story excluding any basement area.

(b) The preparation of any detailed or shop drawings
required to be furnished by a contractor, or the administration of construction contracts by persons customarily engaged in contracting work.

(c) The preparation of technical submissions or the administration of construction contracts by employees of a person or organization lawfully engaged in the practice of architecture when such employees are acting under the direct supervision of a registered architect.

(d) Officers and employees of the United States of America from engaging in the practice of architecture as employees of said United States of America.

(e) A partnership, corporation or other business entity from performing or holding itself out as able to perform any of the services involved in the practice of architecture, provided such practice is actually carried on under the direct supervision of architects registered in the state of West Virginia.

(f) A nonresident, who holds a certificate to practice architecture in the state in which he resides and in addition holds the certification issued by the national council of architectural registration boards, from agreeing to perform or holding herself or himself out as able to perform any of the professional services involved in the practice of architecture: Provided, That he or she may not perform any of the professional services involved in the practice of architecture until registered as hereinbefore provided and he or she notifies the board in writing if, prior to registration, he or she engages in any of the activities permitted by this paragraph.

(g) The practice of landscape architecture as defined in section two, article twenty-two of this chapter.

§30-12-13. Enforcement.

The board shall enforce the provisions of this article and of the rules adopted hereunder. If any person refuses to obey any decision or order of the board, the board or, upon the request of the board, the attorney general or the appropriate prosecuting attorney, may file an action for the enforcement of such decision or order, including injunctive relief, in the circuit court of
§30-12-14. Penalties.

Whoever violates any provision of this article is 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 twelve months, or both fined and imprisoned.

CHAPTER 153

(H. B. 4659—By Mr. Speaker, Mr. Chambers)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five, seven, nine and twelve, article twenty-six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting license fees for hearing-aid dealers and fitters to be established by rule.

Be it enacted by the Legislature of West Virginia:

That sections three, five, seven, nine and twelve, article twenty-six, 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 26. HEARING-AID DEALERS AND FITTERS.

§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

§30-26-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.

§30-26-7. Results of examination disclosed to applicant; issuance of license; fees.

§30-26-9. Renewal of license.

§30-26-12. Temporary trainee permits.
§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

There is hereby created the West Virginia board of hearing-aid dealers, which shall be composed of five members to be appointed by the governor, by and with the advice and consent of the Senate. The members of the board shall be residents of this state. One member shall be a person licensed to practice medicine in this state and one member shall hold a degree in audiology from an accredited college or university. The remaining three members shall be persons having no less than five years' experience as hearing-aid dealers or fitters and shall hold a valid license under the provisions of this article, except that the hearing-aid dealers or fitters to be first appointed to the board shall obtain a license under the provisions of this article within six months following their appointment to the board.

The term of office of each member of the board shall be four years, excepting that as to the members first appointed to the board, one shall be appointed for two years; two shall be appointed for three years; and two shall be appointed for four years. A board member shall serve until his successor has been duly appointed and qualified and any vacancy in the office of a member shall be filled by appointment for the unexpired term of such member. Any member of the board shall be eligible for reappointment.

The board shall annually at its meeting first succeeding the first day of May elect from its own members a chairman and vice chairman.

Each member of the board shall receive for each day actually engaged in the duties of his office, a per diem salary of one hundred dollars and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of such board. All fees and other moneys collected by the board, pursuant to the provisions of this article, shall be kept in a separate fund and shall be expended solely for the purposes of this article. The compensation for the
members of the board and all expenses incurred under
this article shall be paid from this special fund and no
such compensation or expenses shall be paid from the
general revenue fund of this state. All disbursements of
funds necessary to carry out the provisions of this article
shall be so disbursed only upon the authority of the
board.

The board is hereby empowered, with the assistance
of the department to generally supervise, regulate and
control the practice of dealing in or fitting of hearing
aids in this state, and in so doing, shall administer
qualifying examinations in accordance with the provi-
sions of this article to test the knowledge and proficiency
of all prospective licensees or trainees.

The board may purchase and maintain or rent
audiometric equipment and other facilities necessary to
carry out the examination of applicants as provided in
this article and may purchase such other equipment and
supplies and employ such persons as it deems approp-
riate to carry out the provisions of this article.

The board shall promulgate reasonable rules and
regulations in accordance with and subject to the
provisions of chapter twenty-nine-a of this code:

(a) For the proper performance of its duties;

(b) To define and prescribe the ethical practice of
dealing in or fitting of hearing aids for the safety,
protection and welfare of the public;

(c) To govern the time, place and manner of conduc-
ting the examinations required by this article and the
standard, scope and subject of such examinations, which
examinations shall, as a minimum, conform with the
standards, scope and subjects set forth in section six of
this article and manner and form in which applications
for such examinations shall be filed;

(d) To establish procedures for determining whether
persons holding similar valid licenses from other states
or jurisdictions shall be required to take and success-
fully pass the appropriate qualifying examination as a
condition for such licensing in this state;
To establish such fees for examinations, permits, licenses and renewals as may be necessary to cover the costs of administration.

§30-26-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.

Each person desiring to obtain a license from the board to engage in the practice of dealing in or fitting of hearing aids shall make application to the board. The application shall be made in such manner and form as prescribed by the board and shall be accompanied by the prescribed fee. The application shall state under oath that the applicant:

1. (1) Intends to maintain a permanent office or place of business in this state or that the applicant has at the time of application a permanent office or place of business in another state within a reasonable commuting distance from this state. The board shall determine and prescribe by regulation the term "reasonable distance" as used herein;

2. (2) Is a person of good moral character and that he has never been convicted of nor is presently under indictment for a crime involving moral turpitude;

3. (3) Is eighteen years of age or older;

4. (4) Has an education equivalent to a four-year course in an accredited high school; and

5. (5) Is free of chronic infectious or contagious diseases.

Any person who fails to meet any of the standards set forth in the next preceding paragraph shall not be eligible or qualified to take the examination nor shall any such person be eligible or qualified to engage in the practice of dealing in or fitting of hearing aids.

The board, after first determining that the applicant is qualified and eligible in every respect to take the examination, shall notify the applicant that he has fulfilled all of the qualifications and eligibility requirements as required by this section and shall advise him of the date, time and place for him to appear to be
examine as required by the provisions of this article and the regulations promulgated by the board pursuant to this article.

The board, with the aid and assistance of the department, shall give at least one annual examination of the type required by this article and may give such additional examinations, at such times and places, as the board and the department may deem proper, giving consideration to the number of applications.

§30-26-7. Results of examination disclosed to applicant; issuance of license; fees.

(a) Any person who has taken the examination shall be notified by the board within thirty days following such examination as to whether he has satisfactorily passed the examination. If such person has failed to pass the examination, he shall be notified of the reasons for such failure and the particular portions of the examination which he failed to pass. Such person shall also be advised of his right to take the examination in the future.

If such applicant has satisfactorily passed the examination, he shall be advised of that fact by the board and, upon payment of the prescribed fee, the board shall register the applicant as a licensee and shall issue a license to such applicant. Such license shall remain in effect until the next succeeding thirtieth day of June.

(b) Within six months following the effective date of this article, any applicant for a license who has been engaged in the practice of dealing in or fitting of hearing aids in this state for a period of three years immediately prior to such effective date, shall be so registered and issued a license without being required to undergo or take the examination required by this article: Provided, That such person meets all other requirements of this article and the rules and regulations promulgated pursuant thereto. All of the fees which such prospective licensee would be otherwise required to pay shall be paid by such prospective licensee in the same manner and to the same extent as
if such prospective licensee had not so engaged in such practice in this state for such three-year period.

(c) The issuance of a license by the board must have the concurrence of a majority of its members.

§30-26-9. Renewal of license.

(a) A person who is engaged in the practice of dealing in or fitting of hearing aids shall renew his license annually upon payment of the prescribed renewal fee. A thirty-day period shall be allowed after expiration of a license during which any such license may be renewed upon payment of the renewal fee plus a penalty for late filing. After the expiration of such thirty-day period, the board may renew such license upon payment of twice the prescribed renewal fee. No person who applies for renewal, whose license was suspended for failure to renew, may be required to submit to any examination as a condition of renewal if application is made within two years following the date such license was so suspended.

(b) In each even numbered year beginning with the year one thousand nine hundred eighty-eight, each applicant for renewal of license shall present to the board evidence of continuing study and education of not less than twenty hours in a course of study approved by the board. Such twenty hours of instruction must have been gained during the immediately preceding two years.

§30-26-12. Temporary trainee permits.

A person who meets all of the qualifications and requirements set forth in subdivision (2), section five of this article may obtain a temporary trainee permit upon application to the board. All such applications for a temporary trainee permit shall be made in the manner and form prescribed in the rules and regulations of the board.

Upon receiving an application for a temporary trainee permit as prescribed in this section, accompanied by the prescribed fee, the board shall issue such permit which shall entitle the applicant trainee to engage in the
practice of dealing in or fitting of hearing aids for a period of one year under the supervision and control of a licensee, such licensee to be responsible for the supervision, training and control of such trainee.

If a person holding a temporary trainee permit under this section has not successfully passed the licensing examination within one year from the date of issuance of such permit, the permit may be renewed or reissued under such conditions as the board may require in its rules and regulations for an additional one-year period upon payment of the prescribed fee. No such temporary trainee permit shall be reissued, renewed or extended more than once.

CHAPTER 154
(Com. Sub. for H. B. 4254—By Delegates Buchanan and Gallagher)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.


§29-21-5. Executive director.


§29-21-7. Criminal law research center established; functions.


§29-21-10. Public defender corporations—Intent to apply for funding.

§29-21-11. Public defender corporations—Funding applications; legal representation plans; review.

§29-21-12. Public defender corporation funding applications.

§29-21-13. Approval of public defender corporation funding applications; funding; record keeping by public defender corporations.

§29-21-13a. Compensation and expenses for panel attorneys.

§29-21-14. Public defender corporations—Board of directors.

§29-21-15. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.


§29-21-17. Audits.

§29-21-18. Forgiveness of loans; reversion of public defender corporation assets.


As used in this article, the following words and phrases are hereby defined:

1. (1) "Eligible client": Any person who meets the requirements established by this article to receive publicly funded legal representation in an eligible proceeding as defined herein;

2. (2) "Eligible proceeding": Criminal charges which may result in incarceration, juvenile proceedings, proceedings to revoke parole or probation if the revocation may result in incarceration, contempts of court, child abuse and neglect proceedings which may
result in a termination of parental rights, mental
hygiene commitment proceedings, paternity proceed-
ings, extradition proceedings, proceedings brought in
aid of an eligible proceeding, and appeals from or post
conviction challenges to the final judgment in an eligible
proceeding. Legal representation provided pursuant to
the provisions of this article is limited to the court
system of the state of West Virginia, but does not
include representation in municipal courts unless the
accused is at risk of incarceration;

(3) "Legal representation": The provision of any legal
services or legal assistance consistent with the purposes
and provisions of this article;

(4) "Private practice of law": The provision of legal
representation by a public defender or assistant public
defender to a client who is not entitled to receive legal
representation under the provisions of this article, but
does not include, among other activities, teaching;

(5) "Public defender": The staff attorney employed on
a full-time basis by a public defender corporation who,
in addition to providing direct representation to eligible
clients, has administrative responsibility for the opera-
tion of the public defender corporation. The public
defender may be a part-time employee if the board of
directors of the public defender corporation finds
efficient operation of the corporation does not require a
full-time attorney and the executive director approves
such part-time employment;

(6) "Assistant public defender": A staff attorney
providing direct representation to eligible clients whose
salary and status as a full-time or part-time employee
are fixed by the board of directors of the public defender
corporation;

(7) "Public defender corporation": A corporation
created under section eight of this article for the sole
purpose of providing legal representation to eligible
clients; and

(8) "Public defender office": An office operated by a
public defender corporation to provide legal represent-
tation under the provisions of this article.
§29-21-5. Executive director.

(a) The governor shall appoint, by and with the advice and consent of the Senate, the executive director of public defender services, who shall serve at the will and pleasure of the governor. The executive director shall be a qualified administrator as determined by the governor, and shall be a member of the bar of the supreme court of appeals. In addition to the executive director there shall be such other employees as the executive director determines to be necessary. The executive director shall have the authority to promulgate rules, and shall have such other authority and perform such duties as may be required or necessary to effectuate this article. The executive director shall provide supervision and direction to the other agency employees in the performance of their duties.

(b) The executive director's annual salary shall be as determined by the Legislature.


(a) Consistent with the provisions of this article, the agency is authorized to make grants to and contracts with public defender corporations and with individuals, partnerships, firms, corporations and nonprofit organizations, for the purpose of providing legal representation under this article, and may make such other grants and contracts as are necessary to carry out the purposes and provisions of this article.

(b) The agency is authorized to accept, and employ or dispose of in furtherance of the purposes of this article, any money or property, real, personal or mixed, tangible or intangible, received by gift, devise, bequest or otherwise.

(c) The agency shall establish and the executive director or his designate shall operate a criminal law research center as provided for in section seven of this article. This center shall undertake directly, or by grant or contract, to serve as a clearinghouse for information; to provide training and technical assistance relating to
the delivery of legal representation; and to engage in research, except that broad general legal or policy research unrelated to direct representation of eligible clients may not be undertaken.

(d) The agency shall establish and the executive director or his designate shall operate an accounting and auditing division to require and monitor the compliance with this article by public defender corporations and other persons or entities receiving funding or compensation from the agency. This division shall review all plans and proposals for grants and contracts, and shall make a recommendation of approval or disapproval to the executive director. The division shall prepare, or cause to be prepared, reports concerning the evaluation, inspection, or monitoring of public defender corporations and other grantees, contractors, persons or entities receiving financial assistance under this article, and shall further carry out the agency's responsibilities for records and reports as set forth in section eighteen of this article.

The accounting and auditing division shall require each public defender corporation to annually report on the billable and nonbillable time of its professional employees, including time utilized in administration of the respective offices, so as to compare such time to similar time expended in nonpublic law offices for like activities.

The accounting and auditing division shall provide to the executive director assistance in the fiscal administration of all of the agency's divisions. Such assistance shall include, but not be limited to, budget preparation and statistical analysis.

(e) The agency shall establish and the executive director or a person designated by the executive director shall operate an appellate advocacy division for the purpose of prosecuting litigation on behalf of eligible clients in the supreme court of appeals. The executive director or a person designated by the executive director shall be the director of the appellate advocacy division. The appellate advocacy division shall represent eligible
clients upon appointment by the circuit courts, or by the
supreme court of appeals. The division may, however,
refuse such appointments due to a conflict of interest or
if the executive director has determined the existing
caseload cannot be increased without jeopardizing the
appellate division's ability to provide effective representa-
tion. In order to effectively and efficiently utilize the
resources of the appellate division the executive director
may restrict the provision of appellate representation to
certain types of cases.

The executive director is empowered to select and
employ staff attorneys to perform the duties prescribed
by this subsection. The division shall maintain vouchers
and records for representation of eligible clients, for
record purposes only.

§29-21-7. Criminal law research center established;
functions.

(a) Within the agency, there shall be a division known
as the criminal law research center which may:

(1) Undertake research, studies and analyses and act
as a central repository, clearinghouse and disseminator
of research materials;

(2) Prepare and distribute a criminal law manual and
other materials and establish and implement standard
and specialized training programs for attorneys practic-
ing criminal law;

(3) Provide and coordinate continuing legal education
programs and services for attorneys practicing criminal
law; and

(4) Prepare, supplement and disseminate indices and
digests of decisions of the West Virginia supreme court
of appeals and other courts, statutes and other legal
authorities relating to criminal law.

(b) The services of the criminal law research center
shall be offered at reasonable rates or by subscription
to prosecuting attorneys and their professional staffs,
panel attorneys, and private attorneys engaged in the
practice of criminal law. The services may be provided
to public defender corporations, public defenders and
assistant public defenders at reduced rates.


(a) In each judicial circuit of the state, there is hereby
created a “public defender corporation” of the circuit:
Provided, That one such public defender corporation
shall serve both the twenty-third and thirty-first judicial
circuits. The purpose of such public defender corpora-
tions is to provide legal representation in the respective
circuits in accordance with the provisions of this article.

(b) If the judge of a single judge circuit, the chief
judge of a multijudge circuit or a majority of the active
members of the bar in the circuit determine there is a
need to activate the corporation they shall certify that
fact in writing to the executive director. The executive
director shall allocate funds to those corporations so
certifying in the order in which he or she deems most
efficient and cost effective.

(c) Public defender corporations may apply in writing
to the executive director for permission to merge to form
multicircuit or regional public defender corporations.
Applications for mergers shall be subject to the review
procedures set forth in section eleven of this article.


(a) In each circuit of the state, the circuit court shall
establish and maintain regional and local panels of
private attorneys-at-law who shall be available to serve
as counsel for eligible clients.

(b) An attorney-at-law may become a panel attorney
and be enrolled on the regional or local panel, or both,
to serve as counsel for eligible clients, by informing the
court. A prospective panel attorney shall inform the
court in writing, on forms provided by the executive
director, of a desire to accept appointments generally,
or of the specific types of cases in which he or she will
accept appointments. The attorney shall also indicate
whether or not he or she will accept appointments in
adjoining circuits and, if so, in which circuits. An
agreement to accept cases generally or certain types of
cases particularly shall not prevent a panel attorney from declining an appointment in a specific case.

(c) In all cases where an attorney-at-law is required to be appointed for an eligible client, the appointment shall be made by the circuit judge. In circuits where a public defender office is in operation, the judge shall appoint the public defender office unless such appointment is not appropriate due to a conflict of interest or unless the public defender corporation board of directors or the public defender, with the approval of the board, has notified the court that the existing caseload cannot be increased without jeopardizing the ability of defenders to provide effective representation.

If the public defender office is not available for appointment, the court shall appoint one or more panel attorneys from the local panel. If there is no local panel attorney available, the judge shall appoint one or more panel attorneys from the regional panel. If there is no regional panel attorney available, the judge may appoint a public defender office from an adjoining circuit if such public defender office agrees to the appointment.

In circuits where no public defender office is in operation, the judge shall first refer to the local panel and then to the regional panel in making appointments, and if an appointment cannot be made from the panel attorneys, the judge may appoint the public defender office of an adjoining circuit if the office agrees to the appointment. In any circuit, when there is no public defender, or assistant public defender, local panel attorney or regional panel attorney available, the judge may appoint one or more qualified private attorneys to provide representation, and such private attorney or attorneys shall be treated as panel attorneys for that specific case. In any given case, the appointing judge may alter the order in which attorneys are appointed if the case requires particular knowledge or experience on the part of the attorney to be appointed.

§29-21-10. Public defender corporation—Intent to apply for funding.

(a) Any public defender corporation applying to
public defender services for financial assistance to establish a program to provide legal representation or proposing a major substantive modification to an existing program shall notify the executive director and the circuit judges in the area in which the program will deliver legal representation of the intent to apply for such assistance or modification. Such notice shall be given at least thirty days prior to the filing of an application or a proposal for modification.

(b) Notifications shall include a summary description of the proposed program. The summary description shall contain the following information:

(1) The identity of the applicant;

(2) The geographical area to be served by the proposed program;

(3) A brief description of the proposed program, general size or scale, estimated cost, or other characteristics which will enable the circuit court to determine how the system for representation of indigents within the circuit may be affected by the proposed program;

(4) The estimated date the public defender corporation expects to formally file an application or modification proposal.

§29-21-11. Public defender corporations—Funding applications; legal representation plans; review.

(a) Any public defender corporation or any other entity wishing to secure state financial assistance through the agency shall submit a funding application to the executive director.

(b) The funding application, which is to be submitted in a form prescribed by the executive director, shall contain a general description of the plans and policies the applicant intends to utilize in providing legal representation, and such other information prescribed by the executive director.

(c) All applications for financial assistance from
public defender services under the provisions of this article must be submitted to the circuit judges of the circuit for review prior to their submission to public defender services.

Reviews shall be completed by circuit judges within fifteen days after receipt. If the public defender corporation or other applicant has not received a response within the fifteen-day period, the public defender corporation may consider the judge to have waived his or her opportunity to review and comment on the proposed program or program modification and may submit the application to public defender services.

(d) Completed applications shall include:

(1) All comments and recommendations made by the circuit judges, along with a statement that such comments have been considered prior to submission of the application; or

(2) If no comments have been received from circuit judges, a statement that the procedures outlined in this section have been followed and that no comments or recommendations have been received.

§29-21-12. Public defender corporation funding applications.

(a) If an application does not carry evidence that appropriate circuit judges have been given an opportunity to review the application, the application shall be returned with instructions to fulfill the requirements of section eleven of this article.

(b) The executive director shall within seven working days after taking any major action on an application notify the circuit judges who have reviewed the application of the action taken. Major actions include program approvals, rejections, returns for amendment, deferrals or withdrawals.

(c) If a judge has recommended against approval, or has recommended approval only with specific and major substantive changes, and the executive director approves the application substantially as submitted, the
§29-21-13. Approval of public defender corporation funding applications; funding; record keeping by public defender corporations.

(a) The accounting and auditing division shall review all funding applications and prepare recommendations for an operating plan and budget. The executive director shall review the funding applications and the accounting and auditing recommendations and shall, in consultation with the applicants, prepare a plan for providing legal services.

(b) Upon final approval of a funding application by the executive director, the approved budget shall be set forth in an approval notice. The total cost to the agency shall not exceed the amount set forth in the approval notice and the agency shall not be obligated to reimburse the recipient for costs incurred in excess of the amount unless and until a program modification has been approved in accordance with the provisions of this article.

(c) Funding of public defender corporations or other programs or entities providing legal representation under the provisions of this article shall be by annual grants disbursed in such periodic allotments as the executive director shall deem appropriate.

(d) All recipients of funding under this article shall maintain such records as required by the executive director.

§29-21-13a. Compensation and expenses for panel attorneys.

(a) All panel attorneys shall maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and upon completion of each case, exclusive of appeal, shall submit to the appointing court a voucher for services. Claims for fees and expense reimbursements shall be submitted to the appointing court on forms approved by the executive director. The appointing court shall review the voucher.
to determine if the time and expense claims are reasonable, necessary and valid and shall forward the voucher to the agency with an order approving payment of the claimed amount or of such lesser sum the court considers appropriate. Notwithstanding any other provision of this section, public defender services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by attorneys appointed under this article: Provided, That a panel attorney may be compensated for services rendered and reimbursed for expenses incurred prior to the completion of the case where (1) more than six months have expired since the commencement of the panel attorney's representation in the case; and (2) no prior payment of attorney fees has been made to the panel attorney by public defender services during the case: Provided, however, That the amounts of any fees or expenses paid to the panel attorney on such an interim basis, when combined with any such amounts paid to the panel attorney at the conclusion of the case, shall not exceed the limitations on fees and expenses imposed by this section.

(b) In each case in which a panel attorney provides legal representation under this article, and in each appeal after conviction in circuit court, the panel attorney shall be compensated at the following rates for actual and necessary time expended for services performed and expenses incurred subsequent to the effective date of this article:

(1) For work performed out of court, compensation shall be at the rate of forty-five dollars per hour. Out-of-court work includes, but is not limited to, travel, interviews of clients or witnesses, preparation of pleadings, and prehearing or pretrial research.

(2) For work performed in court, compensation shall be at the rate of sixty-five dollars per hour. In-court work includes, but is not limited to, all time spent awaiting hearing or trial if the presence of the attorney is required at the time.

(3) The maximum amount of compensation for out-of-court and in-court work under this subsection is as
follows: For proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, such amount as the court may approve; for all other eligible proceedings, three thousand dollars.

(c) Actual and necessary expenses incurred in providing legal representation, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services, and expert witnesses shall be reimbursed to a maximum of fifteen hundred dollars unless the court, for good cause shown, gives advance approval to incur expenses for a larger sum: Provided, That when an attorney is appointed to a case outside of the circuit where his or her principal office is located, travel expenses incurred for travel as the result of providing legal representation in the case shall be reimbursed notwithstanding the fifteen hundred dollar limit provided by this subsection: Provided, however, That notwithstanding any other provision of this article, these travel expenses incurred by an attorney appointed to a case outside of his or her circuit as aforesaid shall be reimbursed by public defender services prior to the completion of the case upon the request of the panel attorney on such forms approved by the executive director.

Expense vouchers shall specifically set forth the nature, amount and purpose of expenses incurred and shall provide such receipts, invoices or other documentation required by the executive director.

(d) For purposes of compensation under this section, an appeal to the supreme court of appeals from a final order of the circuit court shall be considered a separate case.

(e) Vouchers submitted under this section shall specifically set forth the nature of the service rendered, the stage of proceeding or type of hearing involved, the date and place the service was rendered and the amount of time expended in each instance. All time claimed on the vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client for which services were rendered is one of several charges
involving multiple warrants or indictments, the voucher
shall indicate such fact and sufficiently identify the
several charges so as to enable the court to avoid a
duplication of compensation for services rendered. The
voucher shall indicate whether the services were
rendered by a local panel attorney, a regional panel
attorney, or such other private attorney as may have
been appointed. The executive director shall refuse to
requisition payment for any voucher which is not in
conformity with the record keeping, compensation or
other provisions of this article and in such circumstance
shall return the voucher to the court for further review.

§29-21-15. Public defender corporations—Board of
directors.

(a) The governing body of each public defender
corporation shall be a board of directors consisting of
persons who are residents of the area to be served by the public defender corporation.

(1) In multi-county circuits, and in the case of multi-
circuit or regional corporations, the county commission
of each county within the area served shall appoint a
director, who shall not be an attorney-at-law. The
president of each county bar association within the area
served shall appoint a director, who shall be an attorney-at-law: Provided, That in a county where there is not an
organized and active bar association, the circuit court
shall convene a meeting of the members of the bar of the
court resident within the county and such members
of the bar shall elect one of their number as a director.
The governor shall appoint one director, who shall serve
as chairman, who may be an attorney-at-law, unless
such appointment would result in there being an even
number of directors, in which event the governor shall
appoint two directors, one of whom may be an attorney-at-law.

(2) In single-county circuits, the manner of selecting
directors shall be the same as that described in
subdivision (1) of this subsection, except that the county
commission shall appoint two directors rather than one,
and the bar shall appoint two directors rather than one.
(b) The board of directors shall have at least four meetings a year. Timely and effective prior public notice of all meetings shall be given, and all meetings shall be public except for those concerned with matters properly discussed in executive session.

(c) The board of directors shall establish and enforce broad policies governing the operation of the public defender corporation but shall not interfere with any attorney's professional responsibilities to clients. The duties of the board of directors shall include, but not be limited to, the following:

(1) Appointment of the public defender and any assistant public defenders as may be necessary to enable the public defender corporation to provide legal representation to eligible clients; and

(2) Approval of the public defender corporation's budget and the fixing of professional and clerical salaries; and

(3) Renewal of the employment contract of the public defender on an annual basis except where such renewal is denied for cause: Provided, That the board of directors shall have the power at any time to remove the public defender for misfeasance, malfeasance or nonfeasance.

(d) To the extent that the provisions of chapter thirty-one of this code regarding nonprofit corporations are not inconsistent with this article, the provisions of such chapter shall be applicable to the board of directors of the public defender corporation.

(e) While serving on the board of directors, no member may receive compensation from the public defender corporation, but a member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of membership.

§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

(a) The agency shall establish, and periodically review
and update financial guidelines for determining eligibility for legal representation made available under the provisions of this article. The agency shall adopt a financial affidavit form for use by persons seeking legal representation made available under the provisions of this article.

(b) All persons seeking legal representation made available under the provisions of this article shall complete the agency's financial affidavit form, which shall be considered as an application for the provision of publicly funded legal representation.

(c) Any juvenile shall have the right to be effectively represented by counsel at all stages of proceedings brought under the provisions of article five, chapter forty-nine of this code. If the child advises the court of his or her inability to pay for counsel, the court shall require the child's parent or custodian to execute a financial affidavit. If the financial affidavit demonstrates that neither of the child's parents, or, if applicable, the child's custodian, has sufficient assets to pay for counsel, the court shall appoint counsel for the child. If the financial affidavit demonstrates that either of the child's parents, or, if applicable, the child's custodian, does have sufficient assets to pay for counsel, the court shall order the parent, or, if applicable, the custodian, to provide, by paying for, legal representation for the child in the proceedings.

The court may disregard the assets of the child's parents or custodian and appoint counsel for the child, as provided above, if the court concludes, as a matter of law, that the child and the parent or custodian have a conflict of interest that would adversely affect the child's right to effective representation of counsel, or concludes, as a matter of law, that requiring the child's parent or custodian to provide legal representation for the child would otherwise jeopardize the best interests of the child.

(d) In circuits in which no public defender office is in operation, circuit judges shall make all determinations of eligibility. In circuits in which a public defender
office is in operation, all determinations of indigency shall be made by a public defender office employee designated by the executive director. Such determinations shall be made after a careful review of the financial affidavit submitted by the person seeking representation. The review of the affidavit shall be conducted in accord with the financial eligibility guidelines established by the agency pursuant to subsection (a) of this section. In addition to the financial eligibility guidelines, the person determining eligibility shall consider other relevant factors, including, but not limited to, those set forth in subdivisions (1) through (9) of subsection (e) of this section. If there is substantial reason to doubt the accuracy of information in the financial affidavit, the person determining eligibility may make such inquiries as are necessary to determine whether the affiant has truthfully and completely disclosed the required financial information.

After reviewing all pertinent matters the person determining eligibility may find the affiant to be eligible to have the total cost of legal representation provided by the state, or may find that the total cost of providing representation shall be apportioned between the state and the eligible person. A person whose annual income exceeds the maximum annual income level allowed for eligibility may receive all or part of the necessary legal representation, or a person whose income falls below the maximum annual income level for eligibility may be denied all or part of the necessary legal representation if the person determining eligibility finds the person's particular circumstances require that eligibility be allowed or disallowed, as the case may be, on the basis of one or more of the nine factors set forth in subsection (e) of this section. If legal representation is made available to a person whose income exceeds the maximum annual income level for eligibility, or if legal representation is denied to a person whose income falls below the maximum annual income level for eligibility, the person determining eligibility shall make a written statement of the reasons for the action and shall specifically relate those reasons to one or more of the factors set forth in subsection (e) of this section.
The following factors shall be considered in determining eligibility for legal representation made available under the provisions of this article:

1. Current income prospects, taking into account seasonal variations in income;

2. Liquid assets, assets which may provide collateral to obtain funds to employ private counsel and other assets which may be liquidated to provide funds to employ private counsel;

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 seeking publicly funded legal representation has made reasonable and diligent efforts to obtain private legal representation, and the results of those efforts;

7. The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;

8. Whether the person seeking publicly funded legal representation has posted a cash bond for bail or has obtained release on bond for bail through the services of a professional bondsman for compensation and the amount and source of the money provided for such bond;

9. The consequences for the individual if legal assistance is denied.

Legal representation requested by the affiant may not be denied in whole or part unless the affiant can obtain legal representation without undue financial hardship. Persons determined to be ineligible by public defender personnel may have the initial determination reviewed by a local circuit judge who may amend, modify or rewrite the initial determination. At any stage of the proceedings a circuit court may determine a prior
finding of eligibility was incorrect or has become incorrect as the result of the affiant's changed financial circumstances, and may revoke any prior order providing legal representation. In such event any attorney previously appointed shall be entitled to compensation under the provisions of law applicable to such appointment for services already rendered.

(g) In the circumstances and manner set forth below, circuit judges may order repayment to the state, through the office of the clerk of the circuit court having jurisdiction over the proceedings, of the costs of representation provided under this article:

(1) In every case in which services are provided to an indigent person and an adverse judgment has been rendered against such person, the court may require that person, and in juvenile cases, may require the juvenile's parents or custodian, to pay as costs the compensation of appointed counsel, the expenses of the defense and such other fees and costs as authorized by statute.

(2) The court shall not order a person to pay costs unless the person is able to pay without undue hardship. In determining the amount and method of repayment of costs, the court shall take account of the financial resources of the person, the person's ability to pay and the nature of the burden that payment of costs will impose. The fact that the court initially determines, at the time of a case's conclusion, that it is not proper to order the repayment of costs does not preclude the court from subsequently ordering repayment should the person's financial circumstances change.

(3) When a person is ordered to repay costs, the court may order payment to be made forthwith or within a specified period of time or in specified installments. If a person is sentenced to a term of imprisonment, an order for repayment of costs is not enforceable during the period of imprisonment unless the court expressly finds, at the time of sentencing, that the person has sufficient assets to pay the amounts ordered to be paid or finds there is a reasonable likelihood the person will acquire the necessary assets in the foreseeable future.
(4) A person who has been ordered to repay costs, and who is not in contumacious default in the payment thereof, may at any time petition the sentencing court for modification of the repayment order. If it appears to the satisfaction of the court that continued payment of the amount ordered will impose undue hardship on the person or the person’s dependents, the court may modify the method or amount of payment.

(5) When a person ordered to pay costs is also placed on probation or imposition or execution of sentence is suspended, the court may make the repayment of costs a condition of probation or suspension of sentence.

(h) Circuit clerks shall keep a record of repaid counsel fees and defense expenses collected pursuant to this section and shall, quarterly, pay the moneys to the state auditor who shall deposit the funds in the general revenue fund of the state.

(i) 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 article. A person who has made an affidavit knowing the contents thereof to be false may be prosecuted for false swearing as provided by law.

§29-21-17. Private practice of law by public defenders.

(a) No full-time public defender or full-time assistant public defender may engage in any private practice of law except as provided in this section.

(b) A board of directors may permit a newly employed full-time public defender or full-time assistant public defender to engage in the private practice of law for compensation for the sole purpose of expeditiously closing and withdrawing from existing private cases from a prior private practice. In no event shall any person employed for more than ninety days as a full-
time public defender or full-time assistant public
defender be engaged in any other private practice of law
for compensation: Provided, That the prohibition against
the private practice of law does not apply to full-time
public defenders employed in class III or class IV
counties as defined by article seven, chapter seven of
this code.

(c) A board of directors may permit a full-time public
defender or full-time assistant public defender to engage
in private practice for compensation, if the defender is
acting pursuant to an appointment made under a court
rule or practice of equal applicability to all attorneys in
the jurisdiction and if the defender remits to the public
defender corporation all compensation received.

(d) A board of directors may permit a full-time public
defender or full-time assistant public defender to engage
in uncompensated private practice of law if the public
defender or assistant public defender is acting:

(1) Pursuant to an appointment made under a court
rule or practice of equal applicability to all attorneys in
the jurisdiction; or

(2) On behalf of a close friend or family member; or

(3) On behalf of a religious, community or charitable
group.

(e) Violation of the requirements of this section is
sufficient grounds for immediate summary dismissal.

§29-21-19. Audits.

(a) The accounts of each public defender corporation
shall be audited annually as soon as possible after the
end of each state fiscal year. Such audits shall be
conducted in accordance with generally accepted
auditing standards by the state tax commissioner.

(b) The audits shall be conducted at the place or
places where the accounts of the public defender
corporation are normally kept. All books, accounts,
financial records, reports, files, and other papers or
property belonging to or in use by the public defender
corporation and necessary to facilitate the audits shall
be made available to the person or persons conducting
the audits; and full facilities for verifying transactions
with the balances and securities held by depositories,
fiscal agents, and custodians shall be afforded to any
such person.

(c) The report of the annual audit shall be filed with
the agency and shall be available for public inspection
during business hours at the principal office of the
public defender corporation. The report of each such
audit shall be maintained for a period of at least five
years at the office of the agency.

§29-21-21. Forgiveness of loans; reversion of public
defender corporation assets.

All equipment, operational or supplemental loans
heretofore made under the former provisions of article
twenty-one are forgiven and declared null and void and
shall not be an obligation of a public defender corpora-
tion formerly established under the previous provisions
of article twenty-one, nor an obligation of any successor
organization or of the members of any board of directors
of any public defender corporation.

CHAPTER 155
(S. B. 492—By Senators Burdette, Mr. President, and M. Manchin)

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one,
chapter ten of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the
powers and duties of the state library commission; and
authorizing the state library commission to offer certain
printed material for sale.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC LIBRARIES.


1 The commission shall give assistance, advice and counsel to all school, state-institutional, free and public libraries, and to all communities in the state which may propose to establish libraries, as to the best means of establishing and administering them, selecting and cataloging books, and other details of library management, and may send any of its members to aid in organizing such libraries or assist in the improvement of those already established.

2 It may also receive gifts of money, books, or other property which may be used or held for the purpose or purposes given; and may purchase and operate traveling libraries under such conditions and rules as the commission deems necessary to protect the interests of the state and best increase the efficiency of the service it is expected to render the public.

3 It may purchase suitable books for traveling libraries and distribute them as needed to those persons and places in the state without adequate public library service. It may collect books and other suitable library matter and distribute the same among state institutions desiring the same.

4 The commission may issue and offer for sale printed material, such as lists and circulars of information, and in the publication thereof may cooperate with other state library commissions and libraries, in order to secure the more economical administration of the work for which it was formed. It may conduct courses of library instruction and hold librarians' institutes in various parts of the state.

5 The commission shall perform such other service in behalf of public libraries as it may consider for the best interests of the state.
AN ACT to amend article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to public libraries; and the confidential nature of certain library records.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-22. Confidential nature of certain library records.

(a) Circulation and similar records of any public library in this state which identify the user of library materials are not public records but shall be confidential and may not be disclosed except:

1. To members of the library staff in the ordinary course of business;

2. Upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward; or

3. Upon appropriate court order or subpoena.

(b) Any disclosure authorized by subsection (a) of this section or any unauthorized disclosure of materials made confidential by that subsection (a) does not in any way destroy the confidential nature of that material, except for the purpose for which an authorized disclosure is made. A person disclosing material as authorized by subsection (a) of this section is not liable therefor.
CHAPTER 157
(H. B. 4690—By Delegates White and M. Burke)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to repeal sections one-a and nine, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four and five of said article, relating to the department of public safety; providing for classification of members; requiring superintendent to establish a system of classification and promotion within the department and authorizing superintendent to promulgate rules for such system; creating salary schedule for members; increasing salaries of members, and repealing certain other provisions dealing with rank restructuring, promotion and promotion evaluation.

Be it enacted by the Legislature of West Virginia:

That sections one-a and nine, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections four and five of said article be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

§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.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

1 The superintendent shall appoint, from the enlisted membership of the department, a deputy superintendent who shall hold the rank of lieutenant colonel and be next in authority to the superintendent. The superintendent shall appoint, from the enlisted membership of the department, the number of other officers and members he deems necessary to operate and maintain the executive offices, training school, scientific laboratory,
keep records relating to crimes and criminals, coordinate traffic safety activities, maintain a system of supplies and accounting and perform other necessary services.

The ranks within the membership of the department shall be colonel, lieutenant colonel, major, captain, first lieutenant, second lieutenant, first sergeant, sergeant, corporal, trooper first class, senior trooper or trooper. Each such member while in uniform shall wear the insignia of rank as provided by law and departmental regulations.

The superintendent may appoint from the membership of the department eleven principal supervisors who shall receive the compensation and hold the temporary rank of lieutenant colonel, major or captain at the will and pleasure of the superintendent. Such appointments shall be exempt from any eligibility requirements established by the career progression system. Any person appointed to a temporary rank under the provisions of this article shall retain his permanent rank or classification and shall remain eligible for promotion or reclassification if his permanent rank is below that of captain. Upon the termination of a temporary appointment by the superintendent, the member shall be entitled to the full rights and privileges of his permanent rank or classification and shall remain eligible for subsequent appointment to a temporary rank.

§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.

The superintendent shall establish within the department of public safety 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.

The superintendent shall, only in the initial implementation of this section, reclassify nonsupervisory members without benefit or requirement of a promotional or reclassification system as long as those reclassified meet the longevity requirements for advancement as follows:

- Trooper—less than three years; senior trooper—three years to eight years; trooper first class—nine years to fourteen years; corporal—more than fourteen years.

The superintendent is authorized to promulgate legislative rules in accordance with chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

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.

Members shall receive annual salaries as follows:

**ANNUAL SALARY SCHEDULE (BASE PAY)**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$1,600 Mo.</td>
</tr>
<tr>
<td>Cadet Trooper After Training</td>
<td>$1,715 Mo.</td>
</tr>
<tr>
<td>Trooper Second Year</td>
<td>$20,976</td>
</tr>
<tr>
<td>Trooper Third Year</td>
<td>$21,300</td>
</tr>
<tr>
<td>Trooper Fourth &amp; Fifth Year</td>
<td>$21,552</td>
</tr>
<tr>
<td>Senior Trooper</td>
<td>$23,352</td>
</tr>
<tr>
<td>Trooper First Class</td>
<td>$25,152</td>
</tr>
<tr>
<td>Corporal</td>
<td>$26,952</td>
</tr>
<tr>
<td>Sergeant</td>
<td>$30,552</td>
</tr>
<tr>
<td>First Sergeant</td>
<td>$32,352</td>
</tr>
<tr>
<td>Second Lieutenant</td>
<td>$34,152</td>
</tr>
<tr>
<td>First Lieutenant</td>
<td>$35,952</td>
</tr>
<tr>
<td>Captain</td>
<td>$37,752</td>
</tr>
<tr>
<td>Grade</td>
<td>Position</td>
</tr>
<tr>
<td>-------</td>
<td>------------------------</td>
</tr>
<tr>
<td>48</td>
<td>Major</td>
</tr>
<tr>
<td>49</td>
<td>Lieutenant Colonel</td>
</tr>
</tbody>
</table>

**ANNUAL SALARY SCHEDULE (BASE PAY)**

**ADMINISTRATION**

**SUPPORT SPECIALIST CLASSIFICATION**

<table>
<thead>
<tr>
<th>Classification</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>21,552</td>
</tr>
<tr>
<td>II</td>
<td>23,352</td>
</tr>
<tr>
<td>III</td>
<td>25,152</td>
</tr>
<tr>
<td>IV</td>
<td>26,952</td>
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<tr>
<td>V</td>
<td>30,552</td>
</tr>
<tr>
<td>VI</td>
<td>32,352</td>
</tr>
<tr>
<td>VII</td>
<td>34,152</td>
</tr>
<tr>
<td>VIII</td>
<td>35,952</td>
</tr>
</tbody>
</table>

**ANNUAL SALARY SCHEDULE (BASE PAY)**

**CRIMINALIST CLASSIFICATION**

<table>
<thead>
<tr>
<th>Classification</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>21,552</td>
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<tr>
<td>II</td>
<td>23,352</td>
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<tr>
<td>III</td>
<td>25,152</td>
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<tr>
<td>IV</td>
<td>26,952</td>
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<tr>
<td>V</td>
<td>30,552</td>
</tr>
<tr>
<td>VI</td>
<td>32,352</td>
</tr>
<tr>
<td>VII</td>
<td>34,152</td>
</tr>
</tbody>
</table>

Each member of the department whose salary is fixed and specified herein shall receive and be entitled to an increase in salary over that hereinbefore set forth, for grade in rank, based on length of service, including that heretofore and hereafter served with the department as follows: At the end of five years of service with the department, such member shall receive a salary increase of three hundred dollars to be effective during his next three years of service and a like increase at three-year intervals thereafter, with such increases to be cumulative.

In applying the foregoing salary schedule where salary increases are provided for length of service, members of the department in service at the time this article becomes effective shall be given credit for prior service and shall be paid such salaries as the same
length of service will entitle them to receive under the provisions hereof.

The Legislature finds and declares that because of the unique duties of members of the department, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the department of public safety are hereby excluded from the provisions of state wage and hour law. The express exclusion hereby enacted shall not be construed as any indication that such members were or were not herefore covered by said wage and hour law.

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 hereinafter provided.

The superintendent shall, within thirty days after the effective date hereof, promulgate a rule to establish the number of hours per month which shall constitute the standard work month for the members of the department. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of such supplemental payment when hours are worked in excess of said standard work month. The rule shall be promulgated pursuant to the provisions of chapter twenty-nine-a of this code. The superintendent shall certify monthly to the department'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 shall not exceed two hundred thirty-six dollars monthly. The superintendent and civilian employees of the department shall not be eligible for any such supplemental payments.

Each member of the department, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his 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 such bond shall
be approved as to form by the attorney general and to
sufficiency by the governor.

Any member of the department 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 such active
duty for training or inactive duty training, and the time
so granted shall not be deducted from any leave
accumulated as a member of the department.

CHAPTER 158
(H. B. 4740—By Delegate Farley)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two,
chapter fifteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the reimbursement by the division of motor vehicles
to the division of public safety for services rendered.

Be it enacted by the Legislature of West Virginia:

That section twelve, 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. DIVISION OF PUBLIC SAFETY.

§15-2-12. Mission of the division; powers of superintend-
ent, officers and members; patrol of
turnpike.

1 (a) The West Virginia division of public safety shall
2 have the mission of statewide enforcement of criminal
3 and traffic laws with emphasis on providing basic
enforcement and citizen protection from criminal
depredation throughout the state and maintaining the
safety of the state's public streets, roads and highways.

(b) The superintendent and each of the officers and
members of the division are hereby empowered:

(1) To make arrests anywhere within the state of any
persons charged with the violation of any law of this
state, or of the United States, and when a witness to the
perpetration of any offense or crime, or to the violation
of any law of this state, or of the United States, may
arrest without warrant; to arrest and detain any persons
suspected of the commission of any felony or misdemea-
nor whenever complaint is made and warrant is issued
thereon for such arrest, and any person so arrested shall
be forthwith brought before the proper tribunal for
examination and trial in the county where the offense
for which any such arrest has been made was
committed;

(2) To serve criminal process issued by any court or
magistrate anywhere within this state (they shall not
serve civil process); and

(3) To cooperate with local authorities in detecting
crime and in apprehending any person or persons
engaged in or suspected of the commission of any crime,
misdemeanor or offense against the law of this state, or
of the United States, or of any ordinance of any
municipality in this state; and to take affidavits in
connection with any application to the division of
highways, division of motor vehicles and division of
public safety of West Virginia for any license, permit
or certificate that may be lawfully issued by these
divisions of state government.

(c) Members of the division of public safety are
hereby created forest patrolmen and game and fish
wardens throughout the state to do and perform any
duties and exercise any powers of such officers, and may
apprehend and bring before any court or magistrate
having jurisdiction of such matters, anyone violating
any of the provisions of chapters twenty, sixty and sixty-
one of this code, and the division of public safety shall
at any time be subject to the call of the West Virginia
alcohol beverage control commissioner to aid in appre-
hending any person violating any of the provisions of
said chapter sixty of this code. They shall serve and
execute warrants for the arrest of any person and
warrants for the search of any premises issued by any
properly constituted authority, and shall exercise all of
the powers conferred by law upon a sheriff. They shall
not serve any civil process or exercise any of the powers
of such officer in civil matters.

(d) Any member of the division of public safety
knowing or having reason to believe that anyone has
violated the law may make complaint in writing before
any court or officer having jurisdiction and procure a
warrant for such offender, execute the same and bring
such person before the proper tribunal having jurisdic-
tion. He shall make return on all such warrants to such
tribunals and his official title shall be "member of the
division of public safety." Members of the division of
public safety may execute any summons or process
issued by any tribunal having jurisdiction requiring the
attendance of any person as a witness before such
tribunal and make return thereon as provided by law,
and any return by a member of the division of public
safety showing the manner of executing such warrant
or process shall have the same force and effect as if
made by a sheriff.

(e) Each member of the division of public safety,
when called by the sheriff of any county, or when the
governor by proclamation so directs, shall have full
power and authority within such county, or within the
territory defined by the governor, to direct and com-
mand absolutely the assistance of any sheriff, deputy
sheriff, chief of police, policeman, game and fish
warden, and peace officer of the state, or of any county
or municipality therein, or of any able-bodied citizen of
the United States, to assist and aid in accomplishing the
purposes expressed in this article. When so called, any
officer or person shall, during the time his assistance is
required, be for all purposes, a member of the division
of public safety and subject to all the provisions of this article.

(f) The superintendent may also assign members of the division to perform police duties on any turnpike or toll road, or any section thereof, operated by the West Virginia parkways, economic development and tourism authority: Provided, That such authority shall reimburse the division of public safety for salaries paid to such members, and shall either pay directly or reimburse the division for all other expenses of such group of members in accordance with actual or estimated costs determined by the superintendent.

(g) The division of public safety may develop proposals for a comprehensive county or multi-county plan on the implementation of an enhanced emergency service telephone system and for causing a public meeting on such proposals, all as set forth in section six-a, article six, chapter twenty-four of this code.

(h) The superintendent may also assign members of the division to administer tests for the issuance of commercial drivers' licenses, operator and junior operator licenses as provided for in section seven, article two, chapter seventeen-b of this code: Provided, That the division of motor vehicles shall reimburse the division of public safety for salaries and employee benefits paid to such members, and shall either pay directly or reimburse the division for all other expenses of such group of members in accordance with actual costs determined by the superintendent.

(i) The superintendent shall be reimbursed by the division of motor vehicles for salaries and employee benefits paid to members of the division of public safety, and shall either be paid directly or reimbursed by the division of motor vehicles for all other expenses of such group of members in accordance with actual costs determined by the superintendent, for services performed by such members relating to the duties and obligations of the division of motor vehicles set forth in chapters seventeen, seventeen-a, seventeen-b, seventeen-c and seventeen-d of this code.
AN ACT to amend and reenact section twenty-five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rules for the administration of the division of public safety and carrying of weapons upon retirement or medical discharge.

Be it enacted by the Legislature of West Virginia:

That section twenty-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. DIVISION OF PUBLIC SAFETY.

§15-2-25. Rules and regulations generally; carrying of weapons upon retirement or medical discharge.

Subject to the written approval of the governor and the provisions of this article, the superintendent may make and promulgate proper rules and regulations for the government, discipline and control of the division of public safety, and shall also cause to be established proper rules and regulations for the examinations of all applicants for appointment thereto. The members of the division of public safety shall be permitted to carry arms and weapons, and no license shall be required for such privilege.

Upon retirement or medical discharge from the division of public safety, and with the written consent of the superintendent, any retired or medically discharged member may carry a handgun for a period of five years following retirement or medical discharge notwithstanding the provisions of article seven, chapter sixty-one of this code. A retired or medically discharged member desiring to carry a handgun after retirement or medical discharge must provide his or her own
handgun. If, upon retirement or medical discharge, a
member elects to carry a handgun as provided herein,
the division of public safety shall maintain and pay for
the bond required under the provisions of section five
of this article for five years following such member's
retirement or medical discharge. Upon request, each
member shall be presented with a letter of authorization
signed by the superintendent authorizing the retired or
medically discharged member to carry a handgun, and
the written authorization shall be carried by the retired
or medically discharged member at all times that he or
she has a handgun on his or her person. The superin-
tendent may revoke the authority at any time without
cause and without recourse. Conviction of the retired or
medically discharged member for the commission of any
felony or for a misdemeanor involving the improper or
illegal use of a firearm shall cause this authority to
terminate immediately without a hearing or other
recourse and without any action on the part of the
superintendent. The superintendent shall promulgate a
legislative rule in accordance with the provisions of
chapter twenty-nine-a of this code, which rule shall
prescribe requirements necessary for the issuance and
continuance of the authority herein granted. The
authority granted herein shall be for a period of five
years immediately following retirement or medical
discharge and shall not be renewed or extended for a
longer term.

CHAPTER 160
(Com. Sub. for S. B. 477—By Senators Jackson, Sharpe and Warner)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifteen of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated
section forty-three, relating to awarding members of the
department of public safety their service revolver upon
retirement.
1258 PUBLIC SERVICE COMMISSION [Ch. 161

Be it enacted by the Legislature of West Virginia:

That article two, 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 forty-three, to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-43. Awarding service revolver upon retirement.

(a) Upon the retirement of a member of the depart-
ment of public safety, the superintendent shall award to
the retiring member his or her service revolver, without
charge, upon determining:

(1) That the retiring member is retiring honorably
with at least twenty years of service; or

(2) Such retiring member is retiring with less than
twenty years of service based upon a determination that
such member is totally physically disabled as a result
of his or her service with the department.

(b) Notwithstanding the provisions of subsection (a) of
this section, the superintendent shall not award his or
her service revolver to any member whom the superin-
tendent finds to be mentally incapacitated or who
constitutes a danger to any person or the community.

CHAPTER 161

(Com. Sub. for S. B. 520—By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)

[Passed March 9, 1990; in effect January 1, 1991. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-four of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section three-c, relating to public service commissions;
ceSSION of jurisdiction over rates for certain services
of telephone utilities subject to competition.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-3c. Cessation of jurisdiction over rates for certain services subject to competition.

(a) Upon the application of any telephone utility, the commission shall, unless it finds that the continued availability of adequate, economical and reliable local exchange telephone service will be adversely affected thereby, permanently cease its regulation of the rates charged by the telephone utility for any commodity or service, except carrier access service, which the commission determines to be subject to workable competition: Provided, That if any such commodity or service thereafter ceases being subject to workable competition by reason of lawful governmental action, or, if the market forces fail to constrain monopolistic practices or anticompetitive behavior, the commission shall upon notice and hearing, reinstitute its regulation of the rates charged for such commodity or service. Evidence of ease of market entry, the presence of other competitors and the availability of like or substitute services shall, for purposes of this section, be sufficient to show that a commodity or service is subject to workable competition. In making its determination, the commission shall not be bound by any previous determination of competitiveness for any other purpose. The furnishing of all such commodities and services shall in all other respects remain fully subject to the commission's jurisdiction.

(b) The commission shall ensure through such accounting system as it deems appropriate that the costs and revenues associated with the furnishing of those commodities and services that the commission determines to be subject to workable competition are not charged against or credited to the utility's cost of
furnishing other services; except, however, that the
commission may, in connection with any general
increase in local exchange telephone rates proposed by
the telephone utility within ten years from the effective
date of this section, credit to the utility's cost of
furnishing local exchange telephone service the contri-
bution, if any, then being yielded by those competitive
commodities or services that such utility was offering as
of the effective date of this section: Provided, That if the
contribution from such competitive commodities or
services is less than the contribution that was being
yielded by those commodities or services during the year
preceding the year in which such commodities or
services were determined to be subject to workable
competition, the commission may, in order to eliminate
such deficiency, further credit to the cost of furnishing
local exchange telephone service any contribution that
is then being yielded by those competitive commodities
or services that were not being offered by the utility as
of the effective date of this section. In no case, however,
shall the additional contribution so credited exceed the
contribution that is actually being yielded by such new
commodities or services, nor shall the commission, in
connection with the crediting of any contribution under
the provisions of this subsection, credit any amount of
contribution that exceeds that which is reasonably
necessary to the continued availability of adequate,
economical, and reliable local exchange telephone
service. Contribution shall be defined to mean the excess
of revenues over costs.

(c) The application of the telephone utility shall be in
such form as the commission may prescribe and shall
contain:

(1) A designation of the commodities or services that
are the subject of the application;

(2) A statement explaining why the applicant believes
that each commodity or service so designated is subject
to workable competition; and

(3) Such other information as the applicant may deem
relevant or the commission may require.
(d) Within sixty days after the filing of the application, or if hearing shall be held thereon, within ninety days after final submission upon oral argument or brief, but in no event longer than one hundred eighty days after the filing of the application, the commission shall enter a final order granting, in whole or in part, or denying the application.

(e) Nothing in this section limits the commission's power to require telephone utilities to maintain uniform, statewide toll rates, or to require that public and semi-public coin telephone service be offered at a flat per message rate. Nothing in this section limits the commission's power to continue to engage in incentive or other innovative forms of ratemaking in connection with its regulation of those services which it has not determined to be subject to workable competition.

Nothing in this section limits the power or right of the consumer advocate division to petition to decrease rates and tariffs in the event of decreases in costs of service.

(f) The provisions of this section do not go into effect until the first day of January, one thousand nine hundred ninety-one.

CHAPTER 162
(Com. Sub. for S. B. 310—By Senator Hawse)

[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conferring ratemaking jurisdiction for access charges of telephone cooperatives upon the public service commission.

Be it enacted by the Legislature of West Virginia:

That section four-b, article two, 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 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.

(a) The rates and charges of electric cooperatives, natural gas cooperatives and municipally operated public utilities, except for municipally operated commercial solid waste facilities as defined in section two-h, article five-f, chapter twenty of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this article, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally operated public utilities and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services. Such rates and charges shall be adopted by the electric, natural gas or telephone cooperative's governing board and in the case of the municipally operated public utility by municipal ordinance to be effective not sooner than forty-five days after adoption: Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of such utility for the month next preceding the month in which the rate change is to become effective or the utility shall give its customers, and in the case of a cooperative, its customers, members and stockholders, such other reasonable notices as will allow filing of timely objections to such rate change. Such rates and charges shall be filed with the commission together with such information showing the basis of such rates and charges and such other information as the commission considers necessary. Any change in such rates and charges with updated information shall be filed with the commission. If a petition, as set out in
subdivision (1), (2) or (3), subsection (c) of this section, is received and the electric cooperative, natural gas cooperative, telephone cooperative or municipality has failed to file with the commission such rates and charges with such information showing the basis of rates and charges and such other information as the commission considers necessary, the suspension period limitation of one hundred twenty days and the one hundred day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or modify such rates upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing said rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state; or

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.
(d) (1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state, under subdivision (1), subsection (c) of this section, shall suspend the adoption of the rate change contained in the ordinance or resolution for a period of one hundred twenty days from the date said rates or charges would otherwise go into effect, or until an order is issued as provided herein.

(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries, or a customer or a group of customers within the municipal boundaries, under a petition filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date said rates or charges would otherwise go into effect or until an order is issued as provided herein.

(e) The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. Said hearing examiner shall conduct a public hearing, and shall within one hundred days from the date the said rates or charges would otherwise go into effect, unless otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas or telephone cooperative or by the municipally operated public utility pursuant to this section.

(f) Upon receipt of a petition for review of the rates under the provisions of subsection (c) of this section, the commission may exercise the power granted to it under the provisions of section three of this article. The commission may determine the method by which such rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas or telephone cooperative or municipality requests such a hearing.
(g) The commission may, upon petition by a municipality or electric, natural gas or telephone cooperative, allow an interim or emergency rate to take effect, subject to future modification, if it is determined that such interim or emergency rate is necessary to protect the municipality from financial hardship and if that financial hardship is attributable solely to the purchase of the utility commodity sold. In such cases, the commission may waive the forty-five-day waiting period provided for in subsection (b) of this section and the one hundred twenty-day suspension period provided for in subsection (d) of this section.

(h) Notwithstanding any other provision, the commission shall have no authority or responsibility with regard to the regulation of rates, income, services or contracts by municipally operated public utilities for services which are transmitted and sold outside of the state of West Virginia.

CHAPTER 163
(H. B. 4147—By Delegates Jones and Manuel)

[Passed March 10, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public service commission's regulation of local emergency telephone systems and the participation by the department of public safety in these proceedings.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article six, 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:
CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-2. Definitions.

§24-6-3. Adoption of emergency telephone system plan.

§24-6-2. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 (1) "County answering point" means a facility to which enhanced emergency telephone system calls for a county are initially routed for response, and where county personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider or transferring the call to the appropriate provider.

3 (2) "Emergency services organization" means the organization established under article five, chapter fifteen of this code.

4 (3) "Emergency service provider" means any emergency services organization or public safety unit.

5 (4) "Emergency telephone system" means a telephone system which through normal telephone service facilities automatically connects a person dialing the primary emergency telephone number to an established public agency answering point, but does not include an enhanced emergency telephone system.

6 (5) "Enhanced emergency telephone system" means a telephone system which automatically connects the person dialing the primary emergency number to the county answering point and in which the telephone network system automatically provides to personnel receiving the call, immediately on answering the call, information on the location and the telephone number from which the call is being made, and upon direction from the personnel receiving the call routes or dispatches such call by telephone, radio or any other appropriate means of communication to emergency
service providers that serve the location from which the call is made.

(6) "Public agency" means the state, and any municipality, county, public district or public authority which provides or has authority to provide fire-fighting, police, ambulance, medical, rescue or other emergency services.

(7) "Public safety unit" means a functional division of a public agency which provides fire-fighting, police, medical, rescue or other emergency services.

(8) "Telephone company" means a public utility which is engaged in the provision of telephone service.

(9) "Comprehensive plan" means a plan pertaining to the installing, modifying or replacing of telephone switching equipment; telephone utilities' response in a timely manner to requests for emergency telephone service by a public agency; telephone utilities' responsibility to report to the public service commission; charges and tariffs for the services and facilities provided by telephone utilities; and access to emergency telephone system by emergency service organizations.

(10) "Technical and operational standards" means those standards of telephone equipment and processes necessary for the implementation of the comprehensive plan as defined in subdivision (9) above.

§24-6-3. Adoption of emergency telephone system plan.

(a) The public service commission shall develop, adopt and periodically review a comprehensive plan establishing the technical and operational standards to be followed in establishing and maintaining emergency telephone systems and enhanced emergency telephone systems.

(b) In developing the comprehensive plan, the public service commission shall consult with telephone companies, and with the various public agencies and public safety units, including, but not limited to, emergency services organizations.
12 (c) The public service commission shall annually
13 review with each operating telephone company their
14 construction and switching replacements projections.
15 During this review, the public service commission shall
16 ensure that all new switching facilities will accommo-
17 date the emergency telephone system.

CHAPTER 164
(Com. Sub. for H. B. 4351—By Delegates Love and Berry)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and seven, article
twenty-one, chapter forty-seven of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to definitions; including political
party executive committees within the definition of
“charitable or public service activity or endeavor”; and
license fees for charitable raffles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-2. Definitions.
§47-21-7. License fee and exemption from taxes.

§47-21-2. Definitions.

1 For purposes of this article, unless specified other-
2 wise:
3 (a) “Charitable or public service activity or endeavor”
4 means any bona fide activity or endeavor which directly
5 benefits a number of people by:
6 (1) Contributing to educational or religious purposes;
7 or
(2) Relieving them from disease, distress, suffering, constraint or the effects of poverty; or
(3) Increasing their comprehension of and devotion to the principles upon which this nation was founded and to the principles of good citizenship; or
(4) Making them aware of or educating them about issues of public concern so long as the activity or endeavor is not aimed at supporting or participating in the campaign of any candidate for public office; or
(5) By lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people; or
(6) Providing or supporting nonprofit community activities for youth, senior citizens or the disabled; or
(7) Providing or supporting nonprofit cultural or artistic activities; or
(8) Providing or supporting any political party executive committee.

(b) "Charitable or public service organization" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal or eleemosynary incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any single candidate for public office.

(c) "Commissioner" means the state tax commissioner.

(d) "Concession" means any stand, booth, cart, counter or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in subdivision (2), subsection (a),
section twelve, article seven, chapter sixty of this code
to the contrary, "concession" includes beverages which
are regulated by and shall be subject to the provisions
of chapter sixty of this code.

(e) "Conduct" means to direct the actual holding of a
raffle by activities including, but not limited to, handing
out tickets, collecting money, drawing the winning
numbers or names, announcing the winning numbers or
names, posting the winning numbers or names, verify-
ing winners and awarding prizes.

(f) "Expend net proceeds for charitable or public
service purposes" means to devote the net proceeds of
a raffle occasion or occasions to a qualified recipient
organization or as otherwise provided by this article and
approved by the commissioner pursuant to section
fifteen of this article.

(g) "Gross proceeds" means all moneys collected or
received from the conduct of a raffle or raffles at all
raffle occasions held by a licensee during a license
period; this term shall not be deemed to include any
moneys collected or received from the sale of concessions
at raffle occasions.

(h) "Joint raffle occasion" means a single gathering or
session at which a series of one or more successive
raffles is conducted by two or more licensees.

(i) "Licensee" means any organization or association
granted an annual or limited occasion license pursuant
to the provisions of this article.

(j) "Net proceeds" means all moneys collected or
received from the conduct of raffle or raffles at
occasions held by a licensee during a license period after
payment of the raffle expenses authorized by sections
eleven, thirteen and fifteen of this article; this term shall
not be deemed to include moneys collected or received
from the sale of concessions at raffle occasions.

(k) "Person" means any individual, association,
society, incorporated or unincorporated organization,
firm, partnership or other nongovernmental entity or
institution.
(l) "Patron" means any individual who attends a raffle occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or participates in any raffle.

(m) "Qualified recipient organization" means any bona fide, not for profit, tax-exempt, as defined in subdivision (p) of this section, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in subparagraphs (1) through (7), subdivision (a) of this section. "Qualified recipient organization" includes, without limitation, any licensee which is organized and functions exclusively as provided in this subdivision.

(n) "Raffle" means a game involving the selling of tickets to participate in such game entitling the holder or holders to a chance on a prize or prizes.

(o) "Raffle occasion" or "occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by a single licensee.

(p) "Tax-exempt association or organization" means an association or organization which is, and has received from the "Internal Revenue Service" a determination letter that is currently in effect stating that the organization is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or 501(d) of the Internal Revenue Code of 1986, as amended; or is exempt from income taxes under subsection 527(a) of said code.

§47-21-7. License fee and exemption from taxes.

(a) A license fee shall be paid to the tax commissioner for annual licenses in the amount of one thousand dollars. A license fee shall be paid to the tax commissioner for a limited occasion license in the amount of fifty dollars. The license fee imposed by this section is in lieu of all other license or franchise taxes or fees of this state, and no county, or municipality or other
political subdivision of this state is empowered to impose
a license or franchise tax or fee on any raffle or raffle
casion.

(b) The gross proceeds derived from the conduct of a
raffle occasion are exempt from state and local business
and occupation taxes, income taxes, excise taxes and all
special taxes. Any charitable or public service organi-
zation conducting a raffle occasion pursuant to the
provisions of this article is exempt from payment of
consumers sales and service taxes, use taxes and all
other taxes on all purchases for use or consumption in
the conduct of a raffle occasion and is exempt from
collecting consumers sales taxes on any admission fees
and sales of raffle tickets.

CHAPTER 165
(Com. Sub. for H. B. 4224—By Delegate Minard)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-seven of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated
article fourteen, relating to the creation of the West
Virginia Appraiser Licensing and Certification Board to
be charged with licensing and certifying real estate
appraisers; requiring licenses for persons appraising
real estate; exceptions; powers and duties of board;
requiring certification for persons using the term “state
certified real estate appraiser” or signing certified
appraisal reports; hearings and orders of board;
applications; qualifications for licensure and certifica-
tion; education, experience, and examination require-
ments; continuing education requirements; complaints,
investigations and disciplinary proceedings; fees;
criminal penalties; waiver of license requirements;
prohibited acts and omissions; nonresident licensure and
certification; and attorney general opinion and duties.
Be it enacted by the Legislature of West Virginia:

That chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted by adding thereto a new article, designated article fourteen, to read as follows:

ARTICLE 14. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§37-14-1. Short title.
§37-14-2. Definitions.
§37-14-3. Real estate appraiser license required.
§37-14-4. Exceptions to license requirement.
§37-14-5. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members are disqualified from participation; compensation; records; office space; personnel.
§37-14-6. General powers and duties.
§37-14-7. Hearings and orders; entry of order without notice and hearing.
§37-14-10. Scope of real estate appraiser license.
§37-14-11. Qualifications for license.
§37-14-12. Courses of study.
§37-14-13. Term of license.
§37-14-16. Complaints and investigations relating to real estate appraiser licenses.
§37-14-17. Professional corporations.
§37-14-20. Waiver of license qualification requirements.
§37-14-21. Special waiver of license qualification requirements.
§37-14-23. Prohibited acts and omissions—Licensees.
§37-14-25. Contingent fees.
§37-14-26. State certified real estate appraiser; use of term.
§37-14-27. Certification application.
§37-14-29. Experience requirement.
§37-14-30. Education requirement.
§37-14-31. Examination required.
§37-14-32. Term of certification.
§37-14-33. Renewal of certification.
§37-14-34. Basis for denial.
§37-14-35. Use of term "state certified real estate appraiser."
§37-14-37. Prohibited acts and omissions—State certified real estate appraiser.
§37-14-1. Short title.

This act shall be known and may be cited as the "Real Estate Appraiser Licensing and Certification Act."

§37-14-2. Definitions.

As used in this article, the following terms shall have the following meanings:

(a) "Appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment. The term "valuation appraisal" refers to an analysis, opinion or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time. An "analysis assignment" refers to an analysis, opinion or conclusion prepared by a real estate appraiser that relates to the nature, quality or utility of identified real estate or identified real property. A "review assignment" refers to an analysis, opinion or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment;

(b) "Appraisal foundation" means the appraisal foundation established on the thirtieth day of November, one thousand nine hundred eighty-seven, as a not-for-profit corporation under the laws of Illinois;

(c) "Appraisal report" means any communication, written or oral, of an appraisal. An appraisal report may be classified by the nature of the assignment as a
For the purposes of this act, the testimony of an appraiser dealing with the appraiser's analyses, conclusions or opinions concerning identified real estate or identified real property is deemed to be an oral appraisal report;

(d) "Board" means the real estate appraiser licensing and certification board established pursuant to the provisions of this article;

(e) "Certified appraisal report" means a written or oral appraisal report that is certified as such by a state certified real estate appraiser. When a state certified real estate appraiser identifies an appraisal report as "certified", such state certified real estate appraiser must indicate which type of certification he or she holds.

The certification of an appraisal report by a state certified real estate appraiser represents to the public that it meets the appraisal standards established pursuant to this article;

(f) "Licensed real estate appraiser" means a person who holds a current, valid real estate appraiser license issued to him or her under the provisions of this article;

(g) "Real estate" means an identified parcel or tract of land, including improvements, if any;

(h) "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report;

(i) "Real estate appraiser" means a person who engages in real estate appraisal activity for a fee or other valuable consideration;

(j) "Real property interests" means one or more defined interests, benefits or rights inherent in the ownership of real estate; and

(k) "State certified real estate appraiser" means a person who holds a current, valid certification as a real estate appraiser issued to him or her under the provisions of this article.
§37-14-3. Real estate appraiser license required.

1 Beginning the first day of July, one thousand nine hundred ninety-one, it is unlawful for any person, for compensation or valuable consideration, to prepare a valuation appraisal or a valuation appraisal report relating to real estate or real property in this state without first obtaining a real estate appraiser license as provided in this article. This section shall not be construed to apply to persons who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion. Nothing in this article, however, shall be construed to prohibit any person who is licensed to practice in this state under any other law from engaging in the practice for which he or she is licensed.

§37-14-4. Exceptions to license requirement.

1 This article does not apply to:

2 (a) A real estate broker or salesperson licensed by this state who, in the ordinary course of his or her business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate, when this opinion as to the listing price or the purchase price is not to be referred to as an appraisal, no opinion is rendered as to the value of the real estate, and no fee is charged;

3 (b) A casual or drive-by inspection of real estate in connection with a consumer loan secured by the said real estate, when the inspection is not referred to as an appraisal, no opinion is rendered as to the value of the real estate, and no fee is charged for the inspection;

4 (c) An employee who renders an opinion as to the value of real estate for his full-time employer, for the employer's internal use only and performed in the regular course of the employee's position, when the opinion is not referred to as an appraisal and no fee is charged; and

5 (d) An appraisal or opinion with regard to the value
24 of a manufactured home, as such term is defined in
25 section two, article nine, chapter twenty-one of this code,
26 if the property appraised does not include real estate or
27 an interest therein.

§37-14-5. Board created; appointment, qualifications,
terms, oath, etc., of members; quorum;
meetings; when members are disqualified
from participation; compensation; records;
office space; personnel.

1 (a) There is hereby created the West Virginia Real
2 Estate Appraiser Licensing and Certification Board
3 which consists of seven members appointed by the
4 governor with the advice and consent of the Senate.
5 Each member shall be a resident of the state of West
6 Virginia. Two members shall be real estate appraisers
7 having at least five years’ experience in appraisal as a
8 principal line of work immediately preceding their
9 appointment, two members shall be selected from
10 financial institutions having at least five years’ experi-
11 ence in real estate lending, and three members who
12 shall not be engaged in the practice of real estate
13 appraisal, real estate brokerage or sales, or have any
14 financial interest in such practices. No member of the
15 board may concurrently be a member of the West
16 Virginia real estate commission. Not more than one
17 appraiser member may be appointed from each congres-
18 sional district.

19 (b) Appointments shall be for a three-year term,
20 except of the members first appointed, three shall serve
21 for two years and one for one year. Each real estate
22 appraiser appointed after the first day of January, one
23 thousand nine hundred ninety-one, shall have appraisal
24 as their principal work and must be a state certified real
25 estate appraiser under this article at the time of
26 appointment and during the term of appointment. No
27 member appointed shall serve for more than six
28 consecutive years. Before entering upon the perfor-
29 mance of his duties, each member shall subscribe to the
30 oath required by section five, article four of the
31 constitution of this state. The governor shall, within
32 sixty days following the occurrence of a vacancy on the
board, fill the same by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating said office. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The board shall elect a chairman. A majority of the members of the board shall constitute a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The board may, upon its own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours’ notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he is or was at any time in the preceding twelve months a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself from participation in a proceeding for any other cause deemed by him to be sufficient. Each member shall receive fifty dollars for each day or portion thereof spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incidental to his duties as a member of the board.

(d) The board shall keep an accurate record of all of its proceedings and make certificates thereupon as may be required by law.

§37-14-6. General powers and duties.

1 The board shall:

2 (a) Define by rule the type of educational experience, appraisal experience and equivalent experience that will meet the statutory requirements of this article;

3 (b) Establish examination specifications as prescribed herein and provide or procure appropriate examinations;

4 (c) Approve or disapprove applications for certification and licensure;
(d) Define by rule continuing education requirements for the renewal of certification and licenses;

(e) Censure, suspend or revoke licenses and certification as provided in this article;

(f) Hold meetings, hearings and examinations in places and at times as it shall designate;

(g) Establish procedures for submitting, approving and disapproving applications;

(h) Maintain an accurate registry of the names and addresses of all persons certified or issued a license to practice under this article;

(i) Maintain accurate records on applicants and licensed or certified real estate appraisers;

(j) Issue to each licensed or certified real estate appraiser a pocket card with the name and license or certification number on each in the size and form it may approve. The license or certification pocket card shall remain the property of the state of West Virginia, and, upon suspension or revocation of the license to practice pursuant to this article, shall be returned immediately to the commission;

(k) Deposit all fees collected by the commission in the state treasury. The state treasurer shall deposit the fees to the credit of the West Virginia appraiser licensing and certification board and shall disburse moneys from the account to pay the cost of board operation. Disbursements from the account shall not exceed the moneys credited to it;

(l) Hire employees to assist in the discharge of the duties imposed upon it by this article subject to the policies and standards of the department of administration. No employee of the commission may be a paid employee of any real estate association, group or real estate dealers, brokers, appraisers or lenders;

(m) Perform any other functions and duties as may be necessary in carrying out the provisions of this article.

All rules shall be promulgated pursuant to the
provisions of chapter twenty-nine-a of this code. The members of the board shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of, or participating in any disciplinary proceeding concerning a licensed or certified real estate appraiser pursuant to this article: Provided, That such action is taken without malicious intent and in the reasonable belief that the action was taken pursuant to the powers and duties vested in the members of the board under this article.

§37-14-7. Hearings and orders; entry of order without notice and hearing.

(a) Subject to the provisions of subsection (c) of this section, notice and hearing shall be provided in advance of the entry of any order by the board. Such notice shall be given to the person with respect to whom the hearing is to be conducted and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board, but shall not be held less than ten or more than thirty days after such notice is given. A hearing may be continued by the board on its own motion or for good cause shown. At any such hearing a party may represent himself or be represented by an attorney admitted to practice before any circuit court of this state.

(b) The board shall have the power and authority to issue subpoenas and subpoenas duces tecum, administer oaths and examine any person under oath in connection with any subject relating to duties imposed upon or powers vested in the board.

(c) Whenever the board shall find that extraordinary circumstances exist which require immediate action, it may forthwith without notice or hearing enter an order taking any action permitted by this article. Immediately upon the entry of such order, certified copies thereof shall be served upon all persons affected thereby and upon demand such persons shall be entitled to a hearing thereon at the earliest practicable time.

1. (a) Any party to a hearing before the board affected by any order of the board made and entered after a hearing as provided in this chapter shall be entitled to judicial review thereof in the manner provided in article five, chapter twenty-nine-a of this code.

2. (b) Any such party adversely affected by a final judgment of a circuit court following judicial review as provided in subsection (a) of this section may seek review thereof by appeal to the supreme court of appeals in the manner provided in article six, chapter twenty-nine-a of this code.


1. An individual who desires to engage in real estate appraisal activity in this state shall make application for a license, in writing, in such form as the board may prescribe.

2. To assist the board in determining whether grounds exist to deny the issuance of a license to an applicant, the board may require the fingerprinting of every applicant for an original license.

§37-14-10. Scope of real estate appraiser license.

1. A licensed real estate appraiser is authorized to appraise all types of real estate and real property in this state, including, but not limited to, commercial, industrial, residential and special purpose.

§37-14-11. Qualifications for license.

1. To qualify for a real estate appraiser license, an applicant shall:

2. (a) Successfully complete not less than forty-five classroom hours in courses of study approved by the board which relate to real estate appraisal. The required forty-five classroom hours shall include (1) not less than thirty classroom hours of study relating to the basic principles of land economics and the basic principles of real estate appraising, and (2) not less than fifteen classroom hours of study specifically relating to the
standards of professional appraisal practice and the
ethical rules to be observed by a real estate appraiser
as required by section twenty-three of this article;

(b) Pass an examination administered by the board
that is based upon forty-five classroom hours of apprai-
sal study and is designed to test an individual's
knowledge of the basic principles of land economics, the
basic principles of real estate appraising, the standards
of professional appraisal practice, and the ethical rules
to be observed by a real estate appraiser; and

(c) Be of good moral character, in the opinion of the
board.

The courses of study referred to in subsection (a) (1)
above must be conducted by (i) an accredited university,
college or junior college; (ii) an approved appraisal
society, institute or association; or (iii) such other school
as may be approved by the board.

§37-14-12. Courses of study.

In making its determinations with respect to the
courses of study required by section eleven, the board
shall give weight to courses which teach one or more of
the following:

(a) Appropriate knowledge of technical terms com-
monly used in or related to real estate appraising,
appraisal report writing and economical concepts
applicable to real estate;

(b) An understanding of the basic principles of land
economics, the basic principles of the real estate
appraisal process, and the problems likely to be
encountered in gathering, interpreting, and processing
the data required in the real estate appraisal process;

(c) An understanding of the standards for the devel-
opment and communication of real estate appraisals as
provided in this article;

(d) An understanding of the ethical rules that a real
estate appraiser is required to observe;

(e) Appropriate knowledge of theories of depreciation,
cost estimating, methods of capitalization, and the mathematics of real estate appraisal;

(f) An understanding of basic real estate law; and

(g) An understanding of the types of misconduct for which disciplinary proceedings may be initiated against a licensed real estate appraiser.

§37-14-13. Term of license.

If the board determines that an applicant meets the requirements of this act and is qualified for a real estate appraiser license, it shall issue a license to the applicant that shall expire one year following the date of issuance unless revoked or suspended prior thereto. The board shall approve or deny each application within ninety days of receipt. If no action is taken within ninety days, the application will be deemed approved and the board shall issue the license.


(a) As a prerequisite to renewal of license, a licensed real estate appraiser shall present evidence satisfactory to the board of having obtained ten hours of continuing education.

(b) The board shall adopt rules for the implementation of the provisions of this section to the end of assuring that each individual renewing his or her license as a real estate appraiser under this article has a working knowledge of current real estate appraisal theories, practices and techniques that will enable such individual to provide competent real estate appraisal services to the members of the public and to financial institutions with whom such individual deals in a professional relationship under the authority of his or her real estate appraiser license.


To renew a current, valid real estate appraiser license, other than a temporary license issued under section forty-four of this article, the holder of such license shall file an application on a form approved by the board and pay the prescribed renewal fee to the board not earlier
than one hundred twenty days nor later than thirty days prior to the expiration date of the license then held. Each application for renewal shall be accompanied by evidence in the form prescribed by the board of having completed the continuing education requirement for renewal specified in this article.

If a licensee fails to apply for a renewal of his or her license as a real estate appraiser within the period prescribed above, such licensee may, within a period of two years following the expiration date of his or her license, obtain a renewal of such license by satisfying all of the requirements for renewal and paying a late renewal fee. The board may refuse to renew any license if the licensee has continued to perform real estate appraisal activities in this state following the expiration of his or her license.

§37-14-16. Complaints and investigations relating to real estate appraiser licenses.

The board may, upon its own motion, and shall, upon the written complaint of any aggrieved person, cause an investigation to be made with respect to an alleged violation of section twenty-three of this article by any licensee or applicant for license in this state. If any investigation discloses a probable violation of section twenty-three of this article by a licensee or applicant, a formal complaint shall be filed. The board shall have the power to deny, suspend, or revoke a license, issue a formal reprimand or impose a fine not to exceed five hundred dollars against an applicant or licensee if, after hearing and notice as provided in this article, the board finds that an applicant or licensee has violated the provisions of section twenty-three of this article.

§37-14-17. Professional corporations.

Nothing contained in this article shall be deemed to prohibit any licensee from engaging in the practice of real estate appraising as a professional corporation in accordance with the provisions of the professional service corporation act of this state.

No person engaged in the business of real estate appraising in this state or acting in the capacity of a real estate appraiser in this state may bring or maintain any action in any court of this state to collect compensation for the performance of real appraisal services for which a license is required by this article without alleging and proving that he or she was the holder of a valid real estate appraiser license in this state at all times during the performance of such services.


(a) A person required by this article to be licensed who engages in real estate appraisal activity in this state without obtaining a license therefor shall be guilty of a misdemeanor, and, upon conviction, shall be punished by fine of not less than five hundred dollars nor more than one thousand dollars and shall be ineligible to obtain a license for a period of one year from the date of his or her conviction of such offense: Provided, That the board, at its discretion, may grant a license to such person within such one-year period upon application, upon a finding of extenuating circumstances, and after an administrative hearing thereon.

(b) Any person acting or purporting to act as a certified real estate appraiser without first obtaining a license to practice under this article is guilty of a misdemeanor, and, upon conviction, shall be fined not more than two thousand five hundred dollars or imprisoned in the county jail for not more than one year, or both fined and imprisoned.

(c) If any person receives any money or the equivalent thereof as a fee, commission, compensation or profit by or in consequence of a violation of any provision of this article, he shall, in addition to the penalties prescribed above, be subject to a penalty of not less than the sum of money so received nor more than three times such sum as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by any person aggrieved as a result of any such violation.
§37-14-20. Waiver of license qualification requirements.

1 Upon an individual review of the qualifications of a real estate appraiser who is actively engaged in appraising real estate or real property in this state on the effective date of this article, the board may waive the requirements in section eleven of this article relating to the successful completion of forty-five classroom hours of appraisal study and the passing of an examination administered by the board that is based upon forty-five classroom hours of appraisal study.

2 Within ninety days after the effective date of this article, the board shall develop general standards and criteria for its use in conducting an individual review of the qualifications of a real estate appraiser who is actively engaged in appraising real estate or real property in this state. These general standards and criteria shall include a requirement that an applicant for a license under this section must have obtained a minimum of two years of real estate appraisal experience within the last five years preceding the date of application. The general standards and criteria developed by the board shall be printed and distributed without charge to all presently practicing real estate appraisers who request a copy.

3 Each real estate appraiser who is actively engaged in appraising real estate in this state on the effective date of this article and wishes to apply for a real estate appraiser’s license under the waiver provisions of this section shall file an application for a license on or before the thirty-first day of December, one thousand nine hundred ninety, on a form approved by the board. If a timely application is filed and the applicant demonstrates competence and experience satisfactory to the board, he or she shall be granted a license under the provisions of this article.

§37-14-21. Special waiver of license qualification requirements.

1 The board may waive the requirements of this article relating to the successful completion of forty-five classroom hours of appraisal study if an applicant:

2 (1) Submits satisfactory evidence of having obtained
a minimum of five years of real estate appraisal
experience within the last seven years preceding the
date of application; and

(2) Passes the examination approved by the board
that satisfies the requirement in subsection (b) of section
eleven of this article.


Each real estate appraiser licensed or certified under
this act shall comply with generally accepted standards
of professional appraisal practice and generally ac-
cepted ethical rules to be observed by a real estate
appraiser. Generally accepted standards of professional
appraisal practice are currently evidenced by the
uniform standards of professional appraisal practice
promulgated by the appraisal foundation; however, after
a public hearing held in accordance with provisions of
the state statutes applicable to public hearings, the
board may make such modifications of or additions to
the uniform standards of professional appraisal practice
as may be appropriate.

§37-14-23. Prohibited acts and omissions—Licensees.

The following acts and omissions shall be considered
grounds for disciplinary action by the board:

(1) Procuring or attempting to procure license under
this article by knowingly making a false statement,
submitting false information or making a material
misrepresentation in an application filed with the board,
or procuring or attempting to procure a license through
fraud or misrepresentation;

(2) Paying money other than the fees provided for by
this article to any member or employee of the board to
procure a license under this article;

(3) An act or omission in the practice of real estate
appraising which constitutes dishonesty, fraud or
misrepresentation with the intent to substantially
benefit the licensee or another person or with the intent
to substantially injure another person;

(4) Entry of a final civil or criminal judgment against
a licensee on grounds of fraud, misrepresentation or deceit in the making of an appraisal of real estate;

(5) Conviction, including a conviction based upon a plea of guilty or nolo contendre, of a crime which is substantially related to the qualifications, functions or duties of a person developing real estate appraisals and communicating real estate appraisals to others;

(6) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(7) Violation of any section of this article, or any rule promulgated thereunder, other than section twenty-three;

(8) Violation of section twenty-three of this article, or any rule promulgated thereunder, as determined by order of the board and related findings of fact;

(9) Violation of the confidential nature of governmental records to which a licensee gained access through employment or engagement as an appraiser by a governmental agency; and

(10) Acceptance of a fee for performing an independent appraisal service, when, in fact, the fee is or was contingent upon the appraiser reporting a predetermined analysis, opinion, or conclusion, or is or was contingent upon the analysis, opinion, conclusion or valuation reached, or upon the consequences resulting from the appraisal assignment.

In a disciplinary proceeding based upon a civil judgment, the licensee shall be afforded an opportunity to present matters in mitigation and extenuation but may not collaterally attack the civil judgment.


1 A client or employer may retain or employ a licensed or certified real estate appraiser to act as a disinterested third party in rendering an unbiased estimate of value or an unbiased analysis, opinion or conclusion. A client or employer may also retain or employ a licensed or
certified real estate appraiser to provide specialized appraisal services to facilitate the client's or employer's objectives. In either case, the appraisal and the appraisal report must comply with the provisions of this article.

The term "independent appraisal service" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property. The term "specialized appraisal service" means an engagement to provide an appraisal service which does not fall within the definition of independent appraisal service. The term specialized appraisal service may include valuation appraisals, analysis assignments and review assignments. Regardless of the intention of the client or employer, if the appraiser is, in fact, perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion or conclusion, the work is classified as an independent appraisal service and not as a specialized appraisal service.

§37-14-25. Contingent fees.

A licensed or certified real estate appraiser who enters into an agreement to perform an independent appraisal service as defined in section twenty-four of this article may not accept a fee that is contingent upon the appraiser reporting a predetermined analysis, opinion, or conclusion that is contingent upon the analysis, opinion, or conclusion reached, or is contingent upon the results achieved by the appraisal assignment.

A licensed or certified real estate appraiser who enters into an agreement to perform a specialized appraisal service as defined in section twenty-four of this article may be paid a fixed fee or a fee that is contingent on the results achieved by the specialized appraisal service. If a licensed or certified real estate appraiser enters into an agreement to perform a
§37-14-26. State certified real estate appraiser; use of term.

No person other than a state certified real estate appraiser under this article shall assume or use that title or any title, designation, or abbreviation likely to create the impression of certification as a real estate appraiser by this state.

Only an individual who has qualified as a state certified real estate appraiser under this article is authorized to prepare and sign a certified appraisal report relating to real estate or real property in this state.

If an appraisal report is prepared and signed by a state certified real estate appraiser and such appraisal report is certified as such by the state certified real estate appraiser, a holder of a real estate appraiser license under this article who assisted in the preparation of such appraisal report is authorized to cosign such appraisal report.

An individual who has not qualified as a state certified real estate appraiser under this article shall not describe or refer to any appraisal or appraisal report relating to real estate or real property in this state by the terms “certified appraisal” or “certified appraisal report.”

§37-14-27. Certification application.

Applications for original certification, applications for renewal of certification and applications to take an examination shall be made in writing to the board on forms approved by the board.

The payment of the appropriate fee must accompany
all applications for original certification and renewal of certification and all applications to take an examination.

At the time of filing an application for original certification or for renewal of certification, each applicant shall sign a pledge to comply with the standards of professional appraisal practice and the ethical rules to be observed by an appraiser that are established from time to time for state certified real estate appraisers under this article. Each applicant shall also certify that he or she understands the types of misconduct, as set forth in this article, for which disciplinary proceedings may be initiated against a state certified real estate appraiser.


There shall be two classes of certification for state certified real estate appraisers:

(a) State certified residential real estate appraiser.—The state certified residential real estate appraiser classification shall consist of those persons who meet the requirements for certification that relate to the appraisal of residential real estate of one to four units, and to the appraisal of residential real estate of up to twelve units when a net income capitalization analysis is not required by the terms of the assignment.

(b) State certified general real estate appraiser.—The state certified general real estate appraiser classification shall consist of those persons who meet the requirements for certification relating to the appraisal of all types of real estate.

Each application for original certification or for the renewal of certification and each application to take an examination shall specify the classification of certification being applied for and, if applicable, the certification previously granted.

§37-14-29. Experience requirement.

As a prerequisite to taking the examination for certification as a state certified real estate appraiser, an applicant shall present evidence satisfactory to the
board that he or she possesses the equivalent of two
years of experience in real property appraisal supported
by adequate written reports or file memoranda. Such
experience, or the equivalent thereof, must be acquired
within a period of five years immediately preceding the
filing of the application for certification.

Each applicant for certification shall furnish under
oath a detailed listing of the real estate appraisal reports
or file memoranda for each year for which experience
is claimed by the applicant. Upon request, the applicant
shall make available to the board for examination a
sample of appraisal reports which the applicant has
prepared in the course of his or her appraisal practice.

§37-14-30. Education requirement.

(a) Residential classification.—As a prerequisite to
taking the examination for certification as a state
certified residential real estate appraiser, an applicant
shall present evidence satisfactory to the board that he
or she is the holder of a valid real estate appraiser
license under this act, and either:

(1) Has a college degree; or

(2) Has successfully completed not less than seventy-
five classroom hours in courses of study approved by the
board. To meet the seventy-five classroom hour require-
ment, an applicant must successfully complete not less
than sixty classroom hours in courses of study approved
by the board which relate to real estate appraisal theory
and practice, plus fifteen classroom hours in courses of
study approved by the board which relate specifically
to the standards of professional appraisal practice, to the
ethical rules to be observed by a real estate appraiser,
and to the provisions of this article. The courses of study
referred to above must be conducted by (1) an accredited
university, college or junior college, (2) an approved
appraisal society, institute or association, or (3) such
other school as may be approved by the board.

(b) General classification.—As a prerequisite to
taking the examination for certification as a state
certified general real estate appraiser, an applicant
shall present evidence satisfactory to the board that he or she is the holder of a valid real estate appraiser license under this article, and either:

(1) Has a college degree; or

(2) Has successfully completed not less than one hundred sixty-five classroom hours in courses of study approved by the board. To meet the one hundred sixty-five classroom hour requirement, an applicant must successfully complete not less than one hundred fifty classroom hours in courses of study approved by the board which relate to real estate appraisal theory and practice, plus fifteen classroom hours in courses of study approved by the board which relate specifically to the standards of professional appraisal practice, to the ethical rules to be observed by a real estate appraiser, and to the provisions of this article. The courses of study referred to above must be conducted by (1) an accredited university, college or junior college, (2) an approved appraisal society, institute or association, or (3) such other school as may be approved by the board.

§37-14-31. Examination required.

An original certification as a state certified real estate appraiser shall not be issued to any person who has not demonstrated through a written examination process that he or she possesses the following:

(a) Appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing, and economic concepts applicable to real estate;

(b) An understanding of the basic principles of land economics, the basic principles of the real estate appraisal process, and the problems likely to be encountered in gathering, interpreting, and processing the data that is required in the real estate appraisal process;

(c) An understanding of the standards for the development and communication of real estate appraisals as provided in this article;
18 (d) An understanding of the ethical rules that a real
19 estate appraiser is required to observe;
20 (e) Knowledge of theories of depreciation, cost esti-
21 mating, methods of capitalization, and the mathematics
22 of real estate appraisal that are appropriate for the
23 classification of certification applied for;
24 (f) Knowledge of such other principles and procedures
25 as may be appropriate for the classification of certifi-
26 cation applied for;
27 (g) An understanding of basic real estate law; and
28 (h) An understanding of the types of misconduct for
29 which disciplinary proceedings may be initiated against
30 a state certified real estate appraiser, as set forth in this
31 article.

§37-14-32. Term of certification.

1 The initial certification issued pursuant to this article
2 shall expire upon the expiration date of the license held
3 by the certificate holder. Thereafter, a certification
4 issued pursuant to this article shall expire four years
5 from the date of issuance or upon the date that the state
6 certified appraiser no longer holds a valid license as a
7 real estate appraiser in this state, whichever first
8 occurs. The scheduled expiration date of the certificate
9 shall appear on the certificate and no other notice of its
10 expiration need be given to its holder.

§37-14-33. Renewal of certification.

To obtain a renewal of certification as a state certified
real estate appraiser under this act, the holder of a
current, valid certification shall make application and
pay the prescribed fee to the board no earlier than one
hundred twenty days nor later than thirty days prior to
the expiration date of the certification then held. Each
application for renewal shall be accompanied by
evidence in the form prescribed by the board of having
completed the continuing education requirements for
renewal specified in this article.

If the board determines that an applicant for renewal
has failed to meet the requirements for renewal of
certification through mistake, misunderstanding, or circumstances beyond the control of the applicant, the board may extend the term of the applicant's certification for a period not to exceed six months upon payment by the applicant of a prescribed fee for the extension. If the applicant for renewal of certification satisfies the requirements for renewal during the extension period, the beginning date of his or her renewal certificate shall be the day following the expiration of the certificate previously held by the applicant.

If a state certified real estate appraiser under this article fails to renew his or her certification prior to its expiration or within any period of extension granted by the board pursuant to this article, such person may obtain a renewal of his or her certification by satisfying all of the requirements for renewal and filing an application for renewal, accompanied by a late renewal fee, within two years of the date that his or her certification expired.

§37-14-34. Basis for denial.

The board may deny the issuance of a certificate as a state certified real estate appraiser to an applicant on any ground enumerated in this article. Any applicant whose application for certification is denied may demand and shall be afforded a hearing pursuant to section seven of this article.

§37-14-35. Use of term “state certified real estate appraiser.”

The term “state certified real estate appraiser” may be used to refer only to an individual who is a state certified real estate appraiser under this article and may not be used following, or immediately in connection with, the name or signature of a firm, partnership, corporation, group, or in such manner that it might be interpreted as referring to a firm, partnership, corporation or group or to anyone other than the individual who is certified under this article. This requirement shall not be construed to prevent a state certified real estate appraiser from signing an appraisal report on behalf of a corporation, partnership, firm or group
practice if it is clear that only the individual is certified and that the corporation, partnership, firm or group practice is not. No certificate shall be issued under the provisions of this article to a corporation, partnership, firm or group.


As a prerequisite to renewal of certification, a state certified real estate appraiser shall present evidence satisfactory to the board of having met the continuing education requirements of this section.

The basic continuing education requirement for renewal of certification shall be the completion by the applicant, during the immediately preceding term of certification, of not less than ten classroom hours of instruction per year in courses or seminars which have received the approval of the board.

In lieu of meeting the requirements set forth above, an applicant for recertification may satisfy all or part of the requirements by presenting evidence of the following:

(a) Completion of an educational program of study determined by the board to be equivalent, for continuing education purposes, to courses or seminars approved by the board; or

(b) Participation other than as a student in educational processes and programs approved by the board which relate to real property appraisal theory, practices or techniques, including, but not necessarily limited to, teaching, program development and preparation of textbooks, monographs, articles and other instructional materials.

The board shall develop rules for the implementation of the provisions of this section to the end of assuring that an individual who renews his or her certification as a state certified real estate appraiser under this article has a working knowledge of current real estate appraisal theories, practices and techniques that will enable such individual to provide competent real estate appraisal services to the members of the public with
whom such individual deals in a professional relationship under the authority of his or her certification. All rules shall be promulgated pursuant to the provisions of chapter twenty-nine-a of this code and shall prescribe the following:

(1) Policies and procedures to be followed in approval of courses of instruction and seminars;

(2) Standards, policies and procedures to be used in evaluating an applicant's claim of equivalency;

(3) Standards, monitoring methods, and systems for recording attendance to be employed by course and seminar sponsors as a prerequisite to approval of courses and seminars for credit.

In developing and proposing rules pursuant to this section, the board shall give consideration to courses of instruction, seminars, and other appraisal education programs developed by or under the auspices of organizations or associations of professional real estate appraisers which are utilized by such organizations or associations for the purpose of awarding real estate appraisal designations or indicating compliance with the continuing education requirements of such organizations or associations.

No amendment or repeal of a rule adopted by the board pursuant to this section shall operate to deprive a state certified real estate appraiser of credit toward renewal of his or her certification for any course of instruction or seminar that has been completed by such state certified real estate appraiser prior to the adoption of the rule.

On or after the first day of January, one thousand nine hundred ninety-one, a certification as a state certified real estate appraiser that has been revoked or suspended as the result of a disciplinary action taken by the board shall not be reinstated unless the applicant for reinstatement presents evidence that he or she has completed the continuing education requirement that is provided in this article for the renewal of certification. This continuing education requirement shall not be imposed
upon an applicant for reinstatement who has been required by the board to successfully complete the examination for state certified real estate appraiser required by section thirty-one of this article as a condition for reinstatement of certification.

§37-14-37. Prohibited acts and omissions—State certified real estate appraisers.

An application for certification or recertification may be denied, and the rights of any state certified real estate appraiser may be revoked or suspended, or the holder of the certificate may be otherwise disciplined in accordance with the provisions of this article, for any of the following acts or omissions:

(a) Failing to meet the minimum qualifications for state certification established by or pursuant to this article;

(b) Procuring or attempting to procure state certification pursuant to this article by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the board or procuring or attempting to procure state certification through any form of fraud or misrepresentation;

(c) Paying money other than the fees provided for in this article to any member or employee of the board to procure state certification under this article;

(d) Violation of section twenty-three of this article, or any rule promulgated thereunder;

(e) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal; and

(f) Negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

§37-14-38. Disciplinary proceedings.

The board may investigate the actions of a state
certified real estate appraiser or an applicant for
certification or recertification and may, upon com-
pliance with the procedural requirements set forth in
section seven of this article, revoke or suspend both the
license and the certificate or otherwise discipline a state
certified real estate appraiser, or deny an application,
for any of the acts or omissions set forth in section
thirty-seven herein.

If an investigation indicates that a state certified real
estate appraiser under this act has violated section
thirty-seven of this article, a formal complaint shall be
prepared by the board staff and served upon such state
certified real estate appraiser. This complaint shall
require the accused party to file an answer to the
complaint within twenty days of the date of service.

In responding to a complaint filed by the staff of the
board, the accused party may admit the allegations of
the complaint, deny the allegations of the complaint or
otherwise plead. Failure to make a timely response shall
be deemed an admission of the allegations of the
complaint. Upon receipt of an answer to the complaint,
the board shall refer the file to the chairperson of the
board. Upon receipt of such file, the chairperson of the
board shall set a date, time and place for a hearing on
the complaint. The date of the hearing shall not be less
than thirty nor more than ninety days from the date that
the file is received, unless such date is extended by the
board for good cause shown.


The hearing on the allegations in the complaint shall
be at the time and place prescribed by the board and
in the manner set forth in section seven of this article.
If, at the conclusion of the hearing, the board determines
that a state certified real estate appraiser is guilty of
a violation of any of the provisions of this article, it shall
prepare a formal decision that shall contain findings of
fact and a recommendation concerning the appropriate
disciplinary action to be taken.

Upon receipt of a decision containing findings of fact
and a recommendation, the board shall carefully review
the decision, the findings of fact and the recommendation made and take such disciplinary action as the board deems appropriate. Disciplinary actions include suspension and revocation of certification, suspension and revocation of license and formal reprimand.

Any party to a hearing before the board affected by any order of the board made and entered after a hearing as provided in this chapter shall be entitled to judicial review as provided in section eight of this article.

§37-14-40. Licensing and certification fees.

The board shall charge and collect appropriate fees annually for its services under this article. The fees charged by the board shall not exceed the amounts indicated below:

(1) A license application fee of fifty dollars;
(2) A license examination fee of twenty-five dollars;
(3) A license renewal fee of fifty dollars;
(4) A delinquent license renewal fee of seventy dollars;
(5) A temporary license fee of thirty dollars;
(6) A certification application fee of two hundred fifty dollars;
(7) A certification examination fee of one hundred dollars;
(8) A certification renewal fee of one hundred dollars;
(9) A delinquent certification renewal fee of two hundred dollars;
(10) The board is also required to collect from individuals who perform or seek to perform appraisal transactions where required by federal law an annual registry fee in an amount to be set by regulation in order to enable the board to transfer the necessary fees to the appraisal subcommittee of the Federal Financial Institution Examination Council.

All fees and revenues collected by the board pursuant
to this act shall be deposited in a special fund that shall
be used solely for the purpose of paying the expenses
incurred in connection with the administration of this
article.

§37-14-41. Licenses, certificates and related records.

1 The board shall issue to each licensee a document
2 stating that such licensee has been licensed under this
3 article and specifying the expiration date.

4 The board shall issue to each state certified real estate
5 appraiser under this article a certificate evidencing
6 such certification and specifying the expiration date. A
7 certificate issued under authority of this article shall
8 bear a certificate number assigned by the board. When
9 signing a certified appraisal report, a state certified real
10 estate appraiser shall place his or her certificate
11 number adjacent to or immediately below his or her title
12 of “State certified residential real estate appraiser” or
13 “State certified general real estate appraiser.” Such
14 certificate number shall also be used in all statements
15 of qualification, contracts or other instruments, includ-
16 ing advertising media used by the certificate holder,
17 when reference is made to his or her status as a state
18 certified real estate appraiser.

19 License documents and certificates shall remain the
20 property of the state, and, upon any suspension or
21 revocation of a license or certification pursuant to this
22 article, the individual holding the related license
23 document and certificate shall immediately return such
24 license document and certificate to the board.

25 The board shall maintain and keep open for public
26 inspection during office hours a complete and properly
27 indexed record of all applications for license or certifi-
28 cation received, licenses and certificates issued, licenses
29 and certificates renewed, and licenses and certificates
30 revoked, canceled or suspended under the provisions of
31 this article. A copy of any such record shall be made
32 available to the public, upon application to the board,
33 at such reasonable price per copy as may be fixed by
34 the board.
§37-14-42. Roster of licensed appraisers and certified appraisers.

1 The board shall publish annually a roster of all licensed and certified appraisers and transmit the roster annually to the applicable federal regulator. A copy of such roster shall be made available to the public, upon application to the board, at such reasonable price per copy as may be fixed by the board.

§37-14-43. Certificate of good standing.

1 The board may, upon payment of a fee in an amount specified by rule, issue a certificate of good standing to any licensed real estate appraiser or any certified real estate appraiser who is in good standing in this state.

§37-14-44. Licensure and certification of nonresidents.

(a) Consent to service of process.—Each applicant for licensure and each applicant for certification who is not a resident of this state shall submit, with his or her application, an irrevocable consent that service of process upon him or her may be made by delivery of the process to the secretary of state if, in an action against the applicant in a court of this state arising out of the applicant’s activities as a real estate appraiser in this state, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

(b) Nonresident license.—A nonresident of this state who has complied with the provisions of subsection (a) of this section may obtain a license as a real estate appraiser in this state by complying with all of the provisions of this article relating to the licensing of real estate appraisers.

(c) Temporary License.—A nonresident of this state who has complied with the provisions of subsection (a) of this section may obtain a temporary license to perform a contract relating to the appraisal of real estate or real property in this state. To qualify for the issuance of a temporary license, an applicant shall:

(1) Submit an application on a form approved by the board;
(2) Submit evidence that he or she is licensed or otherwise authorized to appraise real estate and real property in his or her state of domicile;

(3) Submit a copy of the contract for appraisal services that requires the applicant to appraise real estate or real property in this state and certify that such contract is in full force and effect;

(4) Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile; and

(5) Pay the temporary license fee set forth in section forty of this article.

No more than three temporary licenses shall be granted to an individual in any three-year period.

A temporary license issued under this section shall be expressly limited to a grant of authority to perform the appraisal work required by the contract for appraisal services that is submitted with the application for a temporary license. Each temporary license shall expire upon the completion of the appraisal work required by the contract for appraisal services or upon the expiration of a period six months from the date of issuance, whichever shall first occur. A temporary license may not be renewed.

(d) License by reciprocity.—If, in the determination of the board, another state or territory or the District of Columbia is deemed to have substantially equivalent license laws for real estate appraisers, an applicant for license in this state who is licensed under the law of such other state, territory or district may obtain a license as a real estate appraiser in this state upon such terms and conditions as may be determined by the board: Provided, That the laws of such state, territory or district accord substantially equal reciprocal rights to a licensed real estate appraiser in good standing in this state: Provided, however, That disciplinary proceedings are not pending against such applicant in his or her state of license.

(e) Nonresident certification.—A nonresident of this state may be certified as a state certified real estate
appraiser under this act by complying with all of the provisions of this article relating to state certified real estate appraisers.

(f) Nonresident certification by reciprocity.—If, in the determination of the board, another state, territory or the District of Columbia is deemed to have substantially equivalent certification requirements, an applicant who is certified under the laws of such other state, territory or district may be certified as a state certified real estate appraiser upon such terms and conditions as may be determined by the board.

If the appraiser's business is of a temporary nature, and if the property to be appraised is part of a federally related transaction, and if the appraiser is registered with the appraiser licensing or certifying agency of another state, the board shall recognize the license or certification of such appraiser.

§37-14-45. Attorney general opinions and duties.

At the request of the board, the state attorney general shall render to the board an opinion with respect to all questions of law arising in connection with the administration of this article and shall act as attorney for the board in all actions and proceedings brought by or against the board under, or pursuant to, any of the provisions of this article. All fees and expenses of the attorney general arising out of such duties shall be paid out of the special fund created under this article to pay the expenses of the administration of this article.

CHAPTER 166
(H. B. 4060—By Delegate Farley)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the annual registration fee for dealers and retailers of articles of bedding.
Be it enacted by the Legislature of West Virginia:

That section fourteen, article one-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted as follows:

ARTICLE 1A. BEDDING AND UPHOLSTERY BUSINESS.

§47-1A-14. Annual registration fees.

1 The annual registration fee for all manufacturers shipping or selling articles of bedding, as defined in this article, in the state of West Virginia shall be fifty dollars, payable on the first day of the fiscal year.

2 The annual registration fee for an upholsterer or renovator of articles of bedding, as defined in this article, in the state of West Virginia shall be ten dollars, payable on the first day of the fiscal year.

CHAPTER 167
(Com. Sub. for H. B. 2786—By Delegates Damron and Seacrist)

[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirteen and twenty-six-a, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing that an actuarial valuation report is to be prepared every five years, making all retirees, surviving spouses or future retirees eligible for a supplement cost of living benefit after the first day of July, one thousand nine hundred ninety.

Be it enacted by the Legislature of West Virginia:

That sections thirteen and twenty-six-a, article twenty-two, 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 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREFIGHTERS' PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.
§8-22-13. Reports by board of trustees.

§8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction.

§8-22-13. Reports by board of trustees.

1 The board of trustees for each retirement fund shall
2 have regularly scheduled actuarial valuation reports
3 prepared by a qualified actuary.

4 An actuarial valuation report shall be prepared at
5 least once every five years commencing with the later
6 of (1) the first day of July, one thousand nine hundred
7 eighty-seven, or (2) five years following the most
8 recently prepared actuarial valuation report.

9 For purposes of this section the term "qualified
10 actuary" means only an actuary who is a member of the
11 society of actuaries or the American academy of
12 actuaries. The qualified actuary shall be designated a
13 fiduciary and shall discharge his duties with respect to
14 a fund solely in the interest of the members and
15 members' beneficiaries of that fund. In order for the
16 standard of this section to be met, the qualified actuary
17 shall certify that the actuarial valuation report is
18 complete and accurate and that in his opinion the
19 technique and assumptions used are reasonable and
20 meet the requirements of this section of this article.

21 The board of trustees shall submit to the governing
22 body an annual report showing the condition of the fund
23 under its control. It shall certify in such report the
24 amount of accumulated cash and securities in the fund
25 and shall present a full account of the operation of the
26 system.

§8-22-26a. Supplemental pension benefits entitlement;
benefit payable; application of section; construction.

1 (a) On and after the first day of July, one thousand
2 nine hundred ninety, all retirees, surviving spouses or
3 future retirees thereafter shall receive as a supplemen-
4 tal pension benefit an amount based on a percentage
5 increase equal to any increase in the consumer price
index as calculated by the United States Department of Labor, Bureau of Statistics, for the preceding year. The supplemental pension benefit payable under the provisions of this section shall be paid in equal monthly installments.

(b) This section shall be construed liberally to effectuate the purpose of establishing minimum pension benefits under this article for members and surviving spouses.

CHAPTER 168

(Com. Sub. for H. B. 4693—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]
§5B-6-1. Legislative purpose.

Small businesses operating within this state, due to the rapidly changing economic environment, must compete not only with large in-state and national firms, but also with international firms with greater access to the tools and resources of modern-day businesses. Small businesses serve vital functions of enhancing competition, breeding innovation, and providing much-needed jobs in West Virginia’s communities. Therefore, small businesses must be encouraged and offered the opportunity to improve the manner in which they operate so that they may continue to serve these vital functions.

The purpose of this article is to assist and encourage small businesses within this state to increase both their level and efficiency of production, and to expand the market for their products both within and without this state.

§5B-6-2. Definitions.

As used in this article:

(1) “Small business” means any business or enterprise of any type, whether sole proprietorship, partnership, corporation, or otherwise, which meets the following criteria:

(A) Employs at least ten but not more than one hundred persons;

(B) Has been engaged in the same business in the state for a minimum of one year;

(C) Is in good standing with the department of tax and revenue; and

(D) Can demonstrate that a significant portion of their product is exported out of state or that the opportunity exists for a significant portion of their product to be exported out of state;

(2) “Total cost” means any and all fees actually charged to a qualified small business by a qualified consultant as presented in the application for the small business expansion assistance program;
(3) "Qualified consultant" means any persons engaged in the business of providing consulting services in areas of expertise needed by a certified small business, who is registered with the governor's office of community and industrial development as a provider of services to small business and who possesses at least the following credentials:

(A) Has been established as a consulting business for at least five years, three years of which they must have been established in business in West Virginia; and

(B) Is in good standing with the department of tax and revenue;

(4) "Plan" means a plan by which a small business seeks to increase their level of productivity or efficiency, expand into a new product area, develop new markets or in general to overcome barriers to growth; and

(5) "Consultant's report" means a written report by the consultant containing recommendations on how the small business may proceed to overcome barriers they have identified in their plan. A duplicate copy of the consultant's report must also be submitted to the governor's office of community and industrial development for their review.

§5B-6-3. Small business expansion assistance program. There is hereby created within the governor's office of community and industrial development a program for small business expansion assistance. The director of the governor's office of community and industrial development shall establish a voucher program to be utilized by qualified small businesses to defray certain costs that may be incurred by these small businesses in an effort to expand the market for their products, increase both their level and efficiency of production and address other areas that may be a hindrance to the growth of small business in this state: Provided, That the total expenditures for this program shall not exceed one hundred thousand dollars.

§5B-6-4. Application. The director of the governor's office of community and industrial development shall establish criteria and an
application process to be used to determine approval or denial for participation in the voucher program. The application from the qualified small business shall contain at least the following information: The number of persons employed by the applicant; the total capitalization of the small business; an explanation of the need for the service to be obtained and how that service will impact the small business; an estimate of the cost of the services to be obtained; information on product market area; and the number of years in business.

The governor's office of community and industrial development shall accept applications for this program on the first day of each month and shall notify the applicant of their decision for approval or denial within thirty days of the day of receipt.

§5B-6-5. Certification; reimbursement.

Any small business which satisfies the requirements for proper application as set forth in section four of this article shall be approved by the governor's office of community and industrial development as a certified small business and is eligible for reimbursement for up to fifty percent of the total cost of obtaining consulting services from a qualified consultant, or one thousand five hundred dollars, whichever is less: Provided, That in order for an applicant to be approved as a certified small business said applicant may not have been so certified at any time previously.

Upon certification, the governor's office of community and industrial development shall issue to said certified small business a voucher on which shall be stated either the percentage, not to exceed fifty percent or a certain dollar amount, not to exceed one thousand five hundred dollars of the amount which the certified small business may expect to be reimbursed for services delivered by their consultant.

Upon presentation to the governor's office of community and industrial development of a paid invoice or other satisfactory proof of payment to a company registered with the governor's office of community and industrial
development in the voucher program, the office shall
issue reimbursement in the amount previously certified
on the voucher, to the certified small business.

CHAPTER 169
(Com. Sub. for H. B. 4364—By Mr. Speaker, Mr. Chambers,
and Delegate Wooton)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article five,
chapter seven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; to amend and
reenact sections one, two and four-a, article five-f,
chapter twenty of said code; to further amend said
article by adding thereto a new section, designated
section four-b; to amend and reenact sections five, five-
b and five-c of said article; to amend and reenact
sections one, two and seven, article nine of said chapter;
to further amend said article by adding thereto ten new
sections, designated sections ten-a, ten-b, ten-c, ten-d,
ten-e, ten-f, ten-g, ten-h, ten-i and ten-j; to amend and
reenact sections twelve, twelve-a, twelve-b and twelve-
c of said article; and to further amend said article by
adding thereto a new section, designated section twelve-
d, all relating to county solid waste assessment fees;
adding additional legislative findings and definitions;
requiring site approval permits for all solid waste
disposal facilities; establishing priority for disposal
needs; establishing special provision for residential solid
waste disposal; setting priorities of disposal at a permit
site; requiring bonding of solid waste facilities operating
under a compliance order; making performance bonds
liable for thirty years after closure of a permit site;
eliminating ninety-day comment period by a county or
regional solid waste authority on a pre-siting notice;
requiring county and regional solid waste authorities to
establish a waste management hierarchy; extending
until one thousand nine hundred ninety-one the time
within which county and regional solid waste authorities
must submit comprehensive litter and solid waste control plans and commercial solid waste facility siting plans; providing for bonds and notes for constructing or acquiring or improving or extending solid waste facilities; allowing referendums on the continuation of establishment of Class A landfills; extending until one thousand nine hundred ninety-two the requirements regarding interim site approval; and making the solid waste assessment fee permanent.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two and four-a, article five-f of chapter twenty be amended and reenacted; that said article be further amended by adding thereto a new section, designated section four-b; that sections five, five-b and five-c of said article be amended and reenacted; that sections one, two and seven, article nine of said chapter be amended and reenacted; that said article be further amended by adding thereto ten new sections, designated sections ten-a, ten-b, ten-c, ten-d, ten-e, ten-f, ten-g, ten-h, ten-i and ten-j; that sections twelve, twelve-a, twelve-b and twelve-c of said article be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve-d, all to read as follows:

Chapter
7. County Commissions and Officers.
20. Natural Resources.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-22. County solid waste assessment fees authorized.

1 Each county or regional solid waste authority is hereby authorized to impose a similar solid waste assessment fee to that imposed by section five, article five-f, chapter twenty of this code at a rate not to exceed fifty cents per ton or part thereof upon the disposal of solid waste in that county or region. All assessments due shall be applied to the reasonable costs of administration
of the county’s regional or county solid waste authority including the necessary and reasonable expenses of its members, and any other expenses incurred from refuse cleanup, litter control programs, or any solid waste programs deemed necessary to fulfill its duties.

CHAPTER 20. NATURAL RESOURCES.

Article
5F. Solid Waste Management Act.
9. County and Regional Solid Waste Authorities.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-1. Purpose and legislative findings.
§20-5F-2. Definitions.
§20-5F-4a. Certificate for site approval required for certain solid waste disposal facilities; fee required.
§20-5F-4b. Special provision for residential solid waste disposal.
§20-5F-5. Prohibitions; permits required; priority of disposal.
§20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.
§20-5F-5c. Pre-siting notice.

§20-5F-1. Purpose and legislative findings.

(a) The purpose of this article is to transfer jurisdiction over the management of solid waste under section nine, article one, chapter sixteen of the code from the division of health to the division of natural resources and to establish a comprehensive program of controlling solid waste disposal.

(b) The Legislature finds that uncontrolled, inadequately controlled and improper collection, transportation, processing and disposal of solid waste (1) is a public nuisance and a clear and present danger to people; (2) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests harmful to the public health, safety and welfare; (3) constitutes a danger to livestock and domestic animals; (4) decreases the value of private and public property, causes pollution, blight and deterioration of the natural beauty and resources of the state and has adverse economic and social effects on the state and its citizens; (5) results in the squandering of valuable nonrenewable and nonreplenishable resources contained in solid waste;
(6) that resource recovery and recycling reduces the need for landfills and extends their life; and that (7) proper disposal, resource recovery or recycling of solid waste is for the general welfare of the citizens of this state.

(c) The Legislature further finds that disposal in West Virginia of solid waste from unknown origins threatens the environment and the public health, safety and welfare, and therefore, it is in the interest of the public to identify the type, amount and origin of solid waste accepted for disposal at West Virginia solid waste facilities.

(d) The Legislature further finds that other states of these United States of America have imposed stringent standards for the proper collection and disposal of solid waste and that the relative lack of such standards and enforcement for such activities in West Virginia has resulted in the importation and disposal in the state of increasingly large amounts of infectious, dangerous and undesirable solid wastes and hazardous waste from other states by persons and firms who wish to avoid the costs and requirements for proper, effective and safe disposal of such wastes in the states of origin.

(e) The Legislature further finds that Class A landfills often have capacities far exceeding the needs of the state or the areas of the state which they serve and that such landfills create special environmental problems that require statewide coordination of the management of such landfills.

§20-5F-2. Definitions.

Unless the context clearly requires a different meaning, as used in this article the terms:

(a) “Approved solid waste facility” means a solid waste facility or practice which has a valid permit under this article;

(b) “Chief” shall mean the chief of the section of waste management of the division of natural resources;

(c) “Commercial solid waste facility” means any solid
waste facility which accepts solid waste generated by
sources other than the owner or operator of the facility
and shall not include an approved solid waste facility
owned and operated by a person for the sole purpose of
disposing of solid wastes created by that person or such
person and other persons on a cost-sharing or nonprofit
basis;

(d) "Division" shall mean the division of natural
resources;

(e) "Director" shall mean the director of the division
of natural resources;

(f) "Open dump" means any solid waste disposal
which does not have a permit under this article, or is
in violation of state law, or where solid waste is disposed
in a manner that does not protect the environment;

(g) "Person," "persons" or "applicant" shall mean any
industrial user, public or private corporation, institution,
association, firm or company organized or existing
under the laws of this or any other state or country; state
of West Virginia; governmental agency, including
federal facilities; political subdivision; county commission;
municipal corporation; industry; sanitary district;
public service district; drainage district; soil conservation
district; watershed improvement district; partnership;
trust; estate; person or individual; group of persons
or individuals acting individually or as a group; or any
legal entity whatever;

(h) "Sludge" means any solid, semisolid, residue or
precipitate, separated from or created by a municipal,
commercial or industrial waste treatment plant, water
supply treatment plant or air pollution control facility
or any other such waste having similar origin;

(i) "Solid waste" means any garbage, paper, litter,
refuse, cans, bottles, sludge from a waste treatment
plant, water supply treatment plant or air pollution
control facility, other discarded material, including
carcasses of any dead animal or any other offensive or
unsightly matter, solid, liquid, semisolid or contained
liquid or gaseous material resulting from industrial,
commercial, mining or from community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a, chapter twenty of the code, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, or a hazardous waste either identified or listed under article five-e, chapter twenty of the code or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power generation, the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of the code, so long as such placement or disposal is in conformance with a permit issued pursuant to such chapters; "solid waste" shall not include materials which are recycled by being used or reused in an industrial process to make a product, as effective substitute for commercial products, or are returned to the original process as a substitute for raw material feed stock;

(j) "Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste;

(k) "Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to section eight, article twenty-six, chapter sixteen of this code;

(l) "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource recovery facilities and other such facilities not herein specified. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located;
(m) "Class A facility" means a commercial solid waste disposal facility which handles an aggregate of ten thousand tons or more of solid waste per month; and

(n) "Applicant" means the person applying for a commercial solid waste disposal permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the director of the division of natural resources may specify including the following: Spouses, parents and children and siblings.

§20-5F-4a. Certificate for site approval required for certain solid waste disposal facilities; fee required.

(a) (1) For each commercial solid waste disposal permit or similar renewal permit application filed with the division of natural resources on and after the first day of January, one thousand nine hundred eighty-nine, prior to filing said application, an applicant shall first obtain a certificate of site approval from the county or regional solid waste authority, as the case may be, established in accordance with article nine of this chapter, covering the geographic area in which the solid waste disposal facility is to be located.

(2) For each such solid waste permit or renewal permit application filed with the division of natural resources after the effective date of this act but before the first day of January, one thousand nine hundred eighty-nine, an applicant shall first obtain a certificate of site approval from the county commission of the county in which the solid waste disposal facility is to be located.

(3) For each such solid waste permit or renewal permit application pending before the division of natural resources on the effective date of this act, an applicant shall within thirty days of the effective date of this act obtain a certificate of site approval from the county commission of the county in which the solid waste disposal facility is to be located.

(4) Notwithstanding anything in this section to the
contrary, nothing contained in this section shall be construed to require an applicant for such a solid waste disposal permit or renewal permit to obtain more than one certificate of site approval from the county or authority relating to the same solid waste disposal facility.

(b) The fee for the certificate of site approval is twenty-five dollars payable upon the filing of the application therefor with the county, county solid waste authority or regional solid waste authority, as the case may be.

(c) Each county commission and authority shall as soon as practicable promulgate reasonable rules including, but not limited to, rules for determining the effect of the proposed solid waste facility on residential, business or commercial property investment and values, and the social, economic, aesthetic and environmental impact on community growth and development in utilities, health, education, recreation, safety, welfare and convenience, if any, before issuing any certificate of site approval pursuant to this section. Each county commission and authority may deny a certificate of site approval based upon said rules and regulations or upon a finding of adverse public sentiment.

(d) Any person adversely affected by a decision of a county commission or authority under the provisions of this section may appeal that decision to the circuit court for the county in which the proposed facility is to be located.

§20-5F-4b. Special provision for residential solid waste disposal.

All commercial and public solid waste disposal facilities shall establish and publish a yearly schedule providing for one day per month on which a person not in the business of hauling or disposing of solid waste may dispose of an amount of residential solid waste up to one pick-up truckload or its equivalent, free of all charges and fees.
§20-5F-5. Prohibitions; permits required; priority of disposal.

1 (a) Open dumps are prohibited and it shall be unlawful for any person to create, contribute to or operate an open dump or for any landowner to allow an open dump to exist on his property unless that open dump is under a compliance schedule approved by the chief. Such compliance schedule shall contain an enforceable sequence of actions leading to compliance and shall not exceed two years. Open dumps operated prior to the first day of April, one thousand nine hundred eighty-eight, by a landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or her residence or farm shall not be deemed to constitute a violation of this section if such open dump did not constitute a violation of law on the first day of January, one thousand nine hundred eighty-eight, and unauthorized dumps which were created by unknown persons shall not constitute a violation of this section: Provided, That no person shall contribute additional solid waste to any such dump after the first day of April, one thousand nine hundred eighty-eight, except that the owners of the land on which unauthorized dumps have been or are being made shall not be liable for such unauthorized dumping unless such landowners refuse to cooperate with the division of natural resources in stopping such unauthorized dumping.

(b) It shall be unlawful for any person, unless he holds a valid permit from the division to install, establish, construct, modify, operate or abandon any solid waste facility. All approved solid waste facilities shall be installed, established, constructed, modified, operated or abandoned in accordance with this article, plans, specifications, orders, instructions and rules in effect.

(c) Any permit issued under this article shall be issued in compliance with the requirements of this article, its rules and article five-a and the rules promulgated thereunder, so that only a single permit shall be required of a solid waste facility under these two articles. Each permit issued under this article shall
have a fixed term not to exceed five years: Provided,
That the chief may administratively extend a permit
beyond its five-year term if the approved solid waste
facility is in compliance with this article, its rules and
article five-a of this chapter and the rules promulgated
thereunder: Provided, however, That such administra-
tive extension may not be for more than one year. Upon
expiration of a permit, renewal permits may be issued
in compliance with rules and regulations promulgated
by the director of the division of natural resources.

(d) All existing permits of the division of health for
solid waste facilities under section nine, article one,
chapter sixteen of the code shall continue in full force
and effect until a permit is issued for that approved
solid waste facility under this article: Provided, That all
such existing permits of the division of health shall
expire within five years of the effective date of this
article. Within four years of the effective date of this
article, all persons holding such division of health
permits shall apply to the chief for a permit under this
article: Provided, however, That the chief may require
persons holding such existing health division permits to
reapply under this section prior to four years from the
effective date of this article if persistent violations of
this article, any permit term or condition, orders or
rules promulgated under this article, exist at that
facility. Notwithstanding any other provision contained
in this subsection, the division of natural resources may
enter an extension order for a period of two years while
an application for a permit pursuant to this article is
pending.

(e) No person may dispose in the state of any solid
waste, whether such waste originates in state or out of
state, in a manner which endangers the environment or
the public health, safety or welfare as determined by the
director of the division of natural resources. Upon
request by the director of the division of natural
resources, the director of the division of health shall
provide technical advice concerning the disposal of solid
waste within the state.

(f) To the extent permissible by law, a commercial
solid waste facility shall first ensure that the disposal needs of the county, or if applicable the region, in which it is located are met. If the county solid waste authority, or regional solid waste authority if applicable, in which the facility is located determines that the present or future disposal needs of the county, or if applicable the region, are not being, or will not be, met by the commercial solid waste facility, such authority may apply to the director of the division of natural resources to modify the applicable permit in order to reduce the total monthly tonnage of out of county waste, or if applicable, out of region waste, the facility is permitted to accept by an amount that shall not exceed the total monthly tonnage generated by the county, or if applicable the region, in which the facility is located.

The director of the division of natural resources shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code which reflect the purposes as set forth in this article.

§20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.

(a) After a solid waste permit application has been approved pursuant to this article, or once operations have commenced pursuant to a compliance order, but before a permit has been issued, each operator of a commercial solid waste facility shall furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article, regulations promulgated hereunder and the permit: Provided, That the director shall have the discretion to waive the requirement of a bond from the operator of a commercial solid waste facility, other than a Class A facility, which is operating under a compliance order. The amount of the bond required shall be one thousand dollars per acre and may include an additional amount determined by the director based upon the total estimated cost to the state of completing final closure according to the permit granted to such facility and such measures as are
necessary to prevent adverse effects upon the environment; such measures shall include, but not be limited to, satisfactory monitoring, post-closure care and remedial measures: Provided, however, That the amount of the bond shall not exceed eight thousand dollars per acre. All permits shall be bonded for at least ten thousand dollars. The bond shall cover either (1) the entire area to be used for the disposal of solid waste, or (2) that increment of land within the permit area upon which the operator will initiate and conduct commercial solid waste facility operations within the initial term of the permit pursuant to legislative rules promulgated by the director pursuant to chapter twenty-nine-a of this code. If the operator chooses to use incremental bonding, as succeeding increments of commercial solid waste facility operations are to be initiated and conducted within the permit area, the operator shall file with the director an additional bond or bonds to cover such increments in accordance with this section: Provided further, That once the operator has chosen to proceed with bonding either the entire area to be used for the disposal of solid waste or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for performance bond coverage shall commence with issuance of a permit and continue for the full term of the permit and for a period of up to thirty full years after final closure of the permit site: Provided, That any further time period necessary to achieve compliance with the requirements in the closure plan of the permit shall be considered an additional liability period.

(c) The form of the performance bond shall be approved by the director and may include, at the option of the director, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation (as established by the director), self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds
of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(d) Within twelve months prior to the expiration of the thirty-year period following final closure, the division will conduct a final inspection of the facility. The purpose of the inspection shall be to determine compliance with this article, the division's regulations, the terms and conditions of the permit, orders of the division and the terms and conditions of the bond. Based upon this determination, the division will either forfeit the bond prior to the expiration of the thirty-year period following final closure, or release the bond at the expiration of the thirty-year period following final closure. Bond release requirements shall be provided in regulations promulgated by the director.

(e) If the operator of a commercial solid waste facility abandons the operation of a solid waste disposal facility for which a permit is required by this article or if the permittee fails or refuses to comply with the requirements of this article in any respect for which liability
§20-5F-5c. Pre-siting notice.

Any person investigating an area for the purpose of siting a commercial solid waste facility where no current solid waste permit exists, in order to determine a feasible, approximate location, shall prior to filing an application for a solid waste permit publish a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is to be located. Such notice shall inform the public of the location, nature and other details of the proposed activity as prescribed in rules and regulations to be promulgated as soon as practicable by the director. Within five days of such publication such person shall file with the director a pre-siting notice, which shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. Such notice shall contain a certification of publication from a qualified newspaper, description of the area, the period of investigative review, a United States geological survey topographic map and a map showing the location of property boundaries of the area proposed for siting and other such information as required by rules and regulations promulgated pursuant to this section. The director shall hold a public hearing on the pre-siting notice in the area affected. The director shall define pre-siting activities by promulgating legislative rules pursuant to chapter twenty-nine-a of this code. On or after the first day of January, one thousand nine hundred eighty-nine, the

102 has been charged on the bond, the director shall declare
103 the bond forfeited and shall certify the same to the
104 attorney general who shall proceed to enforce and collect
105 the amount of liability forfeited thereon, and where the
106 operation has deposited cash or securities as collateral
107 in lieu of corporate surety, the secretary shall declare
108 said collateral forfeited and shall direct the state
109 treasurer to pay said funds into a waste management
110 fund to be used by the director to effect proper closure
111 and to defray the cost of administering this article.
112 Should any corporate surety fail to promptly pay, in full,
113 forfeited bond, it shall be disqualified from writing any
114 further surety bonds under this article.

115 §20-5F-5c. Pre-siting notice.

116 Any person investigating an area for the purpose of
117 siting a commercial solid waste facility where no
118 current solid waste permit exists, in order to determine
119 a feasible, approximate location, shall prior to filing an
120 application for a solid waste permit publish a Class II
121 legal advertisement in a qualified newspaper serving
122 the county where the proposed site is to be located. Such
123 notice shall inform the public of the location, nature and
124 other details of the proposed activity as prescribed in
125 rules and regulations to be promulgated as soon as
126 practicable by the director. Within five days of such
127 publication such person shall file with the director a
128 pre-siting notice, which shall be made in writing on
129 forms prescribed by the director and shall be signed and
130 verified by the applicant. Such notice shall contain a
131 certification of publication from a qualified newspaper,
132 description of the area, the period of investigative
133 review, a United States geological survey topographic
134 map and a map showing the location of property
135 boundaries of the area proposed for siting and other
136 such information as required by rules and regulations
137 promulgated pursuant to this section. The director shall
138 hold a public hearing on the pre-siting notice in the area
139 affected. The director shall define pre-siting activities
140 by promulgating legislative rules pursuant to chapter
141 twenty-nine-a of this code. On or after the first day of
142 January, one thousand nine hundred eighty-nine, the

143 has been charged on the bond, the director shall declare
144 the bond forfeited and shall certify the same to the
145 attorney general who shall proceed to enforce and collect
146 the amount of liability forfeited thereon, and where the
147 operation has deposited cash or securities as collateral
148 in lieu of corporate surety, the secretary shall declare
149 said collateral forfeited and shall direct the state
150 treasurer to pay said funds into a waste management
151 fund to be used by the director to effect proper closure
152 and to defray the cost of administering this article.
153 Should any corporate surety fail to promptly pay, in full,
154 forfeited bond, it shall be disqualified from writing any
155 further surety bonds under this article.
pre-siting notice, as prescribed by the director, shall also be filed with the county or regional solid waste authority, established pursuant to article nine, chapter twenty of this code, in which the proposed site is located within five days of the publication of the notice.

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§20-9-1. Legislative findings and purposes.


§20-9-7. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.

§20-9-10a. Bonds and notes.

§20-9-10b. Items included in cost of properties.

§20-9-10c. Bonds or notes may be secured by trust indenture.

§20-9-10d. Sinking fund for bonds or notes.

§20-9-10e. Collection, etc., of revenues and funds and enforcement of covenants; default; suit, etc., by bondholder or noteholder or trustee to compel performance of duties; appointment and powers of receiver.

§20-9-10f. Operating contracts.

§20-9-10g. Statutory mortgage lien created unless otherwise provided; foreclosure thereof.

§20-9-10h. Refunding bonds or notes.

§20-9-10i. Indebtedness of authority.

§20-9-10j. Property, bonds or notes and obligations of authority exempt from taxation.


§20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by West Virginia state solid waste management board; effect on facility siting; public hearings; rules and regulations.

§20-9-12b. Interim siting approval for commercial solid waste facilities.

§20-9-12c. Approval of establishment or continuation of Class A facility by county commission and/or referendum.

§20-9-12d. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

§20-9-1. Legislative findings and purposes.

1 The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia, (2) the degradation of the state's environmental quality including both surface
and groundwaters which provide essential and irreplaceable sources of domestic and industrial water supplies, (3) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare, (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state, (5) has adverse social and economic effects on the state and its citizens, and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

The Legislature further finds that the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and that the lack of proper and effective solid waste collection services and disposal facilities demands that the state of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors.

The Legislature further finds that other states of these United States of America have imposed stringent standards for the proper collection and disposal of solid waste and that the relative lack of such standards and enforcement for such activities in West Virginia has resulted in the importation and disposal into the state of increasingly large amounts of infectious, dangerous and undesirable solid waste and hazardous waste from other states by persons and firms who wish to avoid the costs and requirements for proper, effective and safe disposal of such wastes in the states of origin.

Therefore, it is the purpose of the Legislature to protect the public health and welfare by providing for a comprehensive program of solid waste collection, processing, recycling and disposal to be implemented by state and local government in cooperation with the private sector. The Legislature intends to accomplish this goal by establishing county and regional solid waste authorities throughout the state to develop and imple-
ment litter and solid waste control plans. It is the
further purpose of the Legislature to restrict and
regulate persons and firms from exploiting and endan-
ergering the public health and welfare of the state by
disposing of solid wastes and other dangerous materials
which would not be accepted for disposal in the location
where such wastes or materials were generated.

It is further the purpose of the Legislature to reduce
our solid waste management problems and to meet the
purposes of this article by requiring county and regional
solid waste authorities to establish programs and plans
based on an integrated waste management hierarchy. In
order of preference, the hierarchy is as follows:

(1) *Source reduction.*—This involves minimizing waste
production and generation through product design,
reduction of toxic constituents of solid waste, and
similar activities.

(2) *Recycling, reuse and resource recovery.*—This
involves separating and recovering valuable resources
from the waste stream, composting food and yard waste,
marketing of recyclables and, if environmentally
acceptable, incineration.

(3) *Landfilling.*—This is the lowest priority in the
hierarchy and involves the waste management option of
last resort. To the maximum extent possible, it should
be reserved for nonrecyclables and other materials that
cannot practically be managed in any other way.

The Legislature further finds that the potential
impacts of proposed commercial solid waste facilities
may have a deleterious and debilitating impact upon the
transportation network, property values, economic
growth, environmental quality, other land uses and the
public health and welfare in affected communities. The
Legislature also finds that the siting of such facilities
is not being adequately addressed to protect these
compelling interests of counties and local communities.

The Legislature further finds that affected citizens
and local governments often look to state environmental
regulatory agencies to resolve local land use conflicts
engendered by these proposed facilities. The Legislature
also finds that such local land use conflicts are most effectively resolved in a local governmental forum where citizens can most easily participate in the decision-making process and the land use values of local communities most effectively identified and incorporated into a comprehensive policy which reflects the values and goals of those communities.

Therefore, it is the purpose of the Legislature to enable local citizens to resolve the land-use conflicts which may be created by proposed commercial solid waste facilities through the existing forum of county or regional solid waste authorities.


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

(a) “Approved solid waste facility” means a commercial solid waste facility or practice which has a valid permit or compliance order under article five-f of this chapter;

(b) “Commercial solid waste facility” means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or that person and another person on a cost-sharing or nonprofit basis and shall not include the legitimate reuse and recycling of materials for structural fill, road base, mine reclamation, and similar applications;

(c) “Compliance order” means an administrative order issued pursuant to section five, article five-f, chapter twenty of this code authorizing a solid waste facility to operate without a solid waste permit;

(d) “Open dump” means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment;

(e) “Person” means any industrial user, public or
private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever;

(f) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin;

(g) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including carcasses of any dead animal or any other offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or from community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a, chapter twenty of this code, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, or a hazardous waste either identified or listed under article five-e, chapter twenty of this code, or refuse, slurry, overburden or other waste or material resulting from coal-fired electric power generation, the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters; "solid waste" shall also not
include materials which are recycled by being used or 
reused in an industrial process to make a product, as 
effective substitutes for commercial products, or are 
returned to the original process as a substitute for raw 
material feedstock;

(h) “Solid waste disposal” means the practice of 
disposing of solid waste including placing, depositing, 
dumping or throwing or causing to be placed, deposited, 
dumped or thrown any solid waste;

(i) “Solid waste disposal shed” means the geographical 
area which the solid waste management board designates and files in the state register pursuant to section 
eight, article twenty-six, chapter sixteen of this code;

(j) “Solid waste facility” means any system, facility, 
land, contiguous land, improvements on the land, 
structures or other appurtenances or methods used for 
processing, recycling or disposing of solid waste, 
including landfills, transfer stations, resource recovery 
facilities and other such facilities not herein specified. 
Such facility shall be deemed to be situated, for 
purposes of this article, in the county where the majority 
of the spatial area of such facility is located; and

(k) “Class A facility” means a commercial solid waste 
disposal facility which handles an aggregate of ten 
thousand tons or more of solid waste per month.

§20-9-7. Authority to develop litter and solid waste 
control plan; approval by solid waste management board; development of plan by 
director; advisory rules.

(a) Each county and regional solid waste authority 
shall be required to develop a comprehensive litter and 
solid waste control plan for its geographic area and to 
submit said plan to the solid waste management board 
on or before the first day of July, one thousand nine 
hundred ninety-one. Each authority shall submit a draft 
litter and solid waste control plan to the solid waste 
management board by the thirty-first day of March, one 
thousand nine hundred ninety-one. The comments 
received by the county or regional solid waste authority
at public hearings, two of which shall be required, shall be considered in developing the final plan.

(b) Each litter and solid waste control plan shall include provisions for:

(1) An assessment of litter and solid waste problems in the county;

(2) The establishment of solid waste collection and disposal services for all county residents at their residences, where practicable, or the use of refuse collection stations at disposal access points in areas where residential collection is not practicable. In developing such collection services, primacy shall be given to private collection services currently operating with a certificate of convenience and necessity from the motor carrier division of the public service commission;

(3) The evaluation of the feasibility of requiring or encouraging the separation of residential or commercial solid waste at its source prior to collection for the purpose of facilitating the efficient and effective recycling of such wastes and the reduction of those wastes which must be disposed of in landfills or by other nonrecycling means;

(4) The establishment of an appropriate mandatory garbage disposal program which shall include methods whereby residents must prove either (i) payment of garbage collection fee or (ii) proper disposal at an approved solid waste facility or in an otherwise lawful manner;

(5) A recommendation for the siting of one or more properly permitted public or private solid waste landfills and other facilities, whether existing or proposed, to serve the solid waste needs of the county or the region, as the case may be, consistent with the comprehensive county plan prepared by the county planning commission;

(6) A timetable for the implementation of said plan;

(7) A program for the cleanup, reclamation and stabilization of any open and unpermitted dumps;
(8) The coordination of the plan with the related solid waste collection and disposal services of municipalities and, if applicable, other counties;

(9) A program to enlist the voluntary assistance of private industry and civic groups in volunteer cleanup efforts to the maximum practicable extent;

(10) Innovative incentives to promote recycling efforts;

(11) A program to identify the disposal of solid wastes which are not generated by sources situated within the boundaries of the county or the region established pursuant to this section;

(12) Coordination with the division of highways and other local, state and federal agencies in the control and removal of litter and the cleanup of open and unpermitted dumps;

(13) Establishment of a program to encourage and utilize those individuals incarcerated in the county jail and those adults and juveniles sentenced to probation for the purposes of litter pickup; and

(14) Provision for the safe and sanitary disposal of all refuse from commercial and industrial sources within the county or region, as the case may be, including refuse from commercial and industrial sources, but excluding refuse from sources owned or operated by the state or federal governments.

(c) The solid waste management board shall establish advisory rules to guide and assist the counties in the development of the plans required by this section.

(d) Each plan prepared under this section shall be subject to approval by the solid waste management board. Any plan rejected by the solid waste management board shall be returned to the regional or county solid waste authority with a statement of the insufficiencies in such plan. The authority shall revise the plan to eliminate the insufficiencies and submit it to the director within ninety days.

(e) The solid waste management board shall develop
a litter and solid waste control plan for any county or
regional solid waste authority which fails to submit such
a plan on or before the first day of July, one thousand
eight hundred ninety-one: Provided, That in preparing
such plans the director may determine in his discretion
whether to prepare a regional or county based plan for
those counties which fail to complete such a plan.

§20-9-10a. Bonds and notes.

For constructing or acquiring any solid waste facil-
ities for the authorized purposes of the authority, or
necessary or incidental thereto, and for constructing
improvements and extension thereto, and also for
reimbursing or paying the costs and expenses of
creating the authority, if any, the board of any such
authority is hereby authorized to borrow money from
time to time and in evidence thereof issue the bonds or
notes of such authority, payable from the revenues
derived from the operation of the solid waste facilities
under control of the authority or from such other funds
as are available to the authority for such purpose. Such
bonds or notes may be issued in one or more series, may
bear such date or dates, may mature at such time or
times not to exceed forty years from their respective
dates, may bear interest at such rate or rates, payable
at such times, may be in such form, may carry such
registration privileges, may be executed in such
manner, may be payable at such place or places, may
be subject to such terms of redemption with or without
premium, may be declared or become due before
maturity date thereof, may be authenticated in any
manner, and upon compliance with such conditions, and
may contain such terms and covenants as may be
provided by resolution or resolutions of the board.
Notwithstanding the form or tenor thereof, and in the
absence of any express recital on the face thereof, that
the bond or note is nonnegotiable, all such bonds or notes
shall be, and shall be treated as, negotiable instruments
for all purposes. The bonds or notes shall be executed
by the chairman of the board, who may use a facsimile
signature. The official seal of the authority or a
facsimile thereof shall be affixed to or printed on each
bond or note and attested, manually or by facsimile
signature, by the secretary-treasurer of the board, and
any coupons attached to any bond or note shall bear the
signature or facsimile signature of the chairman of the
board. Bonds or notes bearing the signatures of officers
in office on the date of the signing thereof shall be valid
and binding for all purposes notwithstanding that
before the delivery thereof any or all of the persons
whose signatures appear thereon shall have ceased to be
such officers. Notwithstanding the requirements or
provisions of any other law, any such bonds or notes may
be negotiated or sold in such manner and at such time
or times as is found by the board to be most advantage-
ous. Any resolution or resolutions providing for the
issuance of such bonds or notes may contain such
covenants and restrictions upon the issuance of addi-
tional bonds or notes thereafter as may be deemed
necessary or advisable for the assurance of the payment
of the bonds or notes thereby authorized.

§20-9-10b. Items included in cost of properties.

The cost of any solid waste facilities acquired under
the provisions of this article shall be deemed to include
the cost of the acquisition or construction thereof, costs
of closure of solid waste facilities, the cost of all property
rights, easements and franchises deemed necessary or
convenient therefor and for the improvements and
extensions thereto; interest upon bonds or notes prior to
and during construction or acquisition and for twelve
months after completion of construction or of acquisition
of the improvements and extensions; engineering, fiscal
agents and legal expenses; expenses for estimates of cost
and of revenues, expenses for plans, specifications and
surveys; other expenses necessary or incident to deter-
mining the feasibility or practicability of the enterprise,
administrative expense, and such other expenses as may
be necessary or incident to the financing herein
authorized, and the construction or acquisition of the
properties and the placing of same in operation, and the
performance of the things herein required or permitted,
in connection with any thereof.
§20-9-10c. Bonds or notes may be secured by trust indenture.

1. In the discretion and at the option of the board such bonds or notes may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia. The resolution authorizing the bonds or notes and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the authority and the members of its board and officers in relation to the construction or acquisition of solid waste facilities and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or notes or revenues of the solid waste facilities or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders or noteholders and such trustee.

§20-9-10d. Sinking fund for bonds or notes.

1. At or before the time of the issuance of any bonds or notes under this article, the board may by resolution or in the trust indenture provide for the creation of a sinking fund and for payments into such fund from the revenues of the solid waste facilities operated by the authority or from other funds available thereto such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds or notes at or
before the time each will respectively become due and
to establish and maintain reserves therefor. All sums
which are or should be, in accordance with such
provisions, paid into such sinking fund shall be used
solely for payment of interest and principal and for the
retirement of such bonds or notes or at prior to maturity
as may be provided or required by such resolution.

§20-9-10e. Collection, etc., of revenues and funds and
enforcement of covenants; default; suit, etc.,
by bondholder or noteholder or trustee to
compel performance of duties; appointment
and powers of receiver.

The board for any such authority shall have power to
insert enforceable provisions in any resolution authoriz-
ing the issuance of bonds or notes relating to the
collection, custody and application of revenues or of the
authority from the operation of the solid waste facilities
under its control or other funds available to the
authority and to the enforcement of the covenants and
undertakings of the authority. In the event there shall
be default in the sinking fund provisions aforesaid or in
the payment of the principal or interest on any of such
bonds or notes or, in the event the authority or its board
or any of its officers, agents or employees, shall fail or
refuse to comply with the provisions of this article, or
shall default in any covenant or agreement made with
respect to the issuance of such bonds or notes or offered
as security therefor, then any holder or holders of such
bonds or notes and any such trustee under the trust
indenture, if there be one, shall have the right by suit,
action, mandamus or other proceeding instituted in the
circuit court for the county or any of the counties
wherein the authority extends, or in any other court of
competent jurisdiction, to enforce and compel perfor-
mance of all duties required by this article or under-
taken by the authority in connection with the issuance
of such bonds or notes, and upon application of any such
holder or holders, or such trustee, such court shall, upon
proof of such defaults, appoint a receiver for the affairs
of the authority and its properties, which receiver so
appointed shall forthwith directly, or by his agents and
30 attorneys, enter into and upon and take possession of the
31 affairs of the authority and each and every part thereof,
32 and hold, use, operate, manage and control the same,
33 and in the name of the authority exercise all of the
34 rights and powers of such authority as shall be deemed
35 expedient, and such receiver shall have power and
36 authority to collect and receive all revenues and apply
37 same in such manner as the court shall direct. Whenever
38 the default causing the appointment of such receiver
39 shall have been cleared and fully discharged and all
40 other defaults shall have been cured, the court may in
41 its discretion and after such notice and hearing as it
42 deems reasonable and proper direct the receiver to
43 surrender possession of the affairs of the authority to its
44 board. Such receiver so appointed shall have no power
45 to sell, assign, mortgage, or otherwise dispose of any
46 assets of the authority except as hereinbefore provided.

§20-9-10f. Operating contracts.

The board may enter into contracts or agreements
with any persons, firms or corporations for the operation
and management of the solid waste facilities for such
period of time and under such terms and conditions as
shall be agreed upon between the board and such
persons, firms or corporations. The board shall have
power to provide in the resolution authorizing the
issuance of bonds or notes, or in any trust indenture
securing such bonds or notes, that such contracts or
agreements shall be valid and binding upon the
authority as long as any of said bonds or notes, or
interest thereon, are outstanding and unpaid.

§20-9-10g. Statutory mortgage lien created unless other-
wise provided; foreclosure thereof.

Unless otherwise provided by resolution of the board,
there shall be and is hereby created a statutory
mortgage lien upon such solid waste facilities of the
authority, which shall exist in favor of the holders of
bonds or notes hereby authorized to be issued, and each
of them, and the coupons attached to said bonds or notes,
and such solid waste facilities shall remain subject to
such statutory mortgage lien until payment in full of all
principal of and interest on such bonds or notes. Any
holder of such bonds or notes, of any coupons attached
thereto, may, either at law or in equity, enforce said
statutory mortgage lien conferred hereby and upon
default in the payment of the principal of or interest on
said bonds or notes, and may foreclose such statutory
mortgage lien in the manner now provided by the laws
of the state of West Virginia for the foreclosure of
mortgages on real property.
§20-9-10h. Refunding bonds or notes.
1 The board of any authority having issued bonds or
notes under the provisions of this article is hereby
empowered thereafter by resolution to issue refunding
bonds or notes of such authority for the purpose of
retiring or refinancing any or all outstanding bonds or
notes, together with any unpaid interest thereon and
redemption premium thereunto appertaining and all of
the provisions of this article relating to the issuance,
security and payment of bonds or notes shall be
applicable to such refunding bonds or notes, subject,
however, to the provisions of the proceedings which
authorized the issuance of the bonds or notes to be so
refunded.
§20-9-10i. Indebtedness of authority.
1 No constitutional or statutory limitation with respect
to the nature or amount of or rate of interest on
indebtedness which may be incurred by municipalities,
counties or other public or governmental bodies shall
apply to the indebtedness of an authority. No indebted-
ness of any nature of authority shall constitute an
indebtedness of the state of West Virginia or any
municipality or county therein or a charge against any
property of said state of West Virginia or any munic-
ipalities or counties. No indebtedness or obligation
incurred by any authority shall give any right against
any member of the governing body of any municipality
or any member of the authority of any county or any
member of the board of any authority. The rights of
creditors of any 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.
§20-9-10j. Property, bonds or notes 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 municipalities or to any officer or employee of the state or of any subdivision thereof or of any municipalities. The property of the authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence 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 taxes.


The authority may exercise all powers necessary or appropriate to carry out the purposes and duties provided in this article, including the following:

(1) Sue and be sued, plead and be impleaded and have and use a common seal.

(2) To conduct its business in the name of the county solid waste authority or the regional solid waste authority, as the case may be, in the names of the appropriate counties.

(3) The authority board of directors shall promulgate rules and regulations to implement the provisions of sections eight and nine of this article and is authorized to promulgate rules and regulations for purposes of this article and the general operation and administration of authority affairs.

(4) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the conduct of its affairs consistent with this article.

(5) To promulgate such rules and regulations as may be proper and necessary to implement the purposes and duties of this article.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for the operation by any person, partner-
ship, corporation or governmental agency, any solid
waste facility or collection, transportation and process-
ing facilities related thereto.

(7) Issue negotiable bonds, notes, debentures or other
evidences of indebtedness and provide for the rights of
the holders thereof, incur any proper indebtedness and
issue any obligations and give any security therefor
which it may deem necessary or advisable in connection
with exercising powers as provided herein.

(8) Make available the use or services of any solid
waste facility collection, transportation and processing
facilities related thereto, to any person, partnership,
corporation or governmental agency consistent with this
article.

(9) Acquire by gift or purchase, hold and dispose of
real and personal property in the exercise of its powers
and duties.

(10) Make and enter all contracts, leases and agree-
ments and to execute all instruments necessary or
incidental to the performance of its duties and powers.

(11) Employ managers, engineers, accountants, attor-
eyes, planners and such other professional and support
personnel as are necessary in its judgment to carry out
the provisions of this article.

(12) Receive and accept from any source such grants,
fees, real and personal property, contributions and funds
of any nature as may become available to the authority
in order to carry out the purposes of this article.

(13) Cooperate with and make such recommendations
to local, state and federal government and the private
sector in the technical, planning and public policy
aspects of litter control and solid waste management as
the authority may find appropriate and effective to
carry out the purposes of this article.

(14) Charge, alter and collect rentals, fees, service
charges and other charges for the use or services of any
solid waste facilities or any solid waste collection,
transportation and processing services provided by the
authority.
(15) Do all acts necessary and proper to carry out the powers expressly granted to the authority by this article and powers conferred upon the authority by this article.

All rules and regulations promulgated by the authority pursuant to this article are exempt from the provisions of article three, chapter twenty-nine-a of the code.

§20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by West Virginia state solid waste management board; effect on facility siting; public hearings; rules and regulations.

(a) On or before the first day of July, one thousand nine hundred ninety-one, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: Provided, That the West Virginia state solid waste management board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

(1) Commercial solid waste landfills which may accept an aggregate of more than ten thousand tons of solid waste per month.

(2) Commercial solid waste landfills which shall accept only less than an aggregate of ten thousand tons of solid waste per month.

(3) Commercial solid waste transfer stations or commercial facilities for the processing or recycling of solid waste.

The siting plan shall include an explanation of the rationale for the zones established therein based on the criteria established in subsection (b) of this section.

(b) The county or regional solid waste authority shall develop the siting plan authorized by this section based
upon the consideration of one or more of the following criteria: The efficient disposal of solid waste, including all solid waste generated within the county or region, economic development, transportation facilities, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes and the public health, welfare and convenience. The plan shall be developed based upon information readily available. Due to the limited funds and time available the plan need not be an exhaustive and technically detailed analysis of the criteria set forth above. Unless the information readily available clearly establishes that an area is suitable for the location of a commercial solid waste facility or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited. Any person making an application for the redesignation of a tentatively prohibited area shall make whatever examination is necessary and submit specific detailed information in order to meet the provision established in subsection (g) of this section.

(c) Prior to completion of the siting plan, the county or regional solid waste authority shall complete a draft siting plan and hold at least one public hearing in each county encompassed in said draft siting plan for the purpose of receiving public comment thereon. The authority shall provide notice of such public hearings and encourage and solicit other public participation in the preparation of the siting plan as required by the rules and regulations promulgated by the West Virginia state solid waste management board for this purpose. Upon completion of the siting plan, the county or regional solid waste authority shall file said plan with the West Virginia state solid waste authority.

(d) The siting plan shall take effect upon approval by the West Virginia state solid waste management board pursuant to the rules and regulations promulgated for
this purpose. Upon approval of said plan, the West Virginia state solid waste management board shall transmit a copy thereof to the director of the division of natural resources and to the clerk of the county commission of the county encompassed by said plan which county clerk shall file the plan in an appropriate manner and shall make the plan available for inspection by the public.

(e) Effective upon approval of the siting plan by the West Virginia state solid waste management board, it shall be unlawful for any person to establish, construct, install or operate a commercial solid waste landfill or transfer station at a site not authorized by the siting plan: Provided, That an existing commercial solid waste landfill or transfer station which, on the effective date of this section, held a valid solid waste permit or compliance order issued by the division of natural resources pursuant to article five-f of this chapter may continue to operate but may not expand the spatial land area of the said facility beyond that authorized by said solid waste permit or compliance order, and may not increase the aggregate monthly solid waste capacity in excess of ten thousand tons monthly unless such a facility is authorized by the siting plan.

(f) The county or regional solid waste authority may, from time to time, amend the siting plan in a manner consistent with the requirements of this section for completing the initial siting plan and the rules and regulations promulgated by the West Virginia state solid waste management board for the purpose of such amendments.

(g) Notwithstanding any provision of this code to the contrary, upon application from a person who has filed a pre-siting notice pursuant to section five-c, article five-f of this chapter, the county or regional solid waste authority or county commission, as appropriate, may amend the siting plan by redesignating a zone that has been designated as an area where a commercial solid waste facility is tentatively prohibited to an area where one is authorized. In such case, the person seeking the change has the burden to affirmatively and clearly
demonstrate, based on the criteria set forth in subsection (b) of this section, that a solid waste facility could be appropriately operated in the public interest at such location. The West Virginia state solid waste management board shall provide, within available resources, technical support to a county or regional solid waste authority, or county commission as appropriate, when requested by such authority or commission to assist it in reviewing an application for any such amendment.

(h) The West Virginia state solid waste management board shall prepare and adopt a siting plan for any county or regional solid waste authority which does not complete and file with the said state authority such a siting plan in compliance with the provisions of this section and the rules and regulations promulgated thereunder. Any siting plan adopted by the West Virginia state solid waste authority pursuant to this subsection shall comply with the provisions of this section, and the rules and regulations promulgated thereunder, and shall have the same effect as a siting plan prepared by a county or regional solid waste authority and approved by the said state authority.

(i) The siting plan adopted pursuant to this section shall incorporate the provisions of the litter and solid waste control plan, as approved by the West Virginia state solid waste management board pursuant to section seven of this article, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste landfill and transfer station capacity.

(j) The West Virginia state solid waste management board is authorized and directed to promulgate rules and regulations specifying the public participation process, content, format, amendment, review and approval of siting plans for the purposes of this section.

§20-9-12b. Interim siting approval for commercial solid waste facilities.

(a) Until the first day of July, one thousand nine hundred ninety-two, or the effective date of the commercial solid waste facility siting plan authorized by section
twelve-a of this article, whichever date occurs first, it shall be unlawful for any person to establish, construct or install a commercial solid waste landfill or transfer station, or to expand the spatial land area of such an existing facility, without a certificate of site approval from the county or regional solid waste authority for the county in which the facility would be situated: Provided, That a person, who, on the effective date of this section, holds a valid Class A approval permit issued by a county commission, may obtain site approval from the county commission for the county in which the facility would be situated: Provided, however, That no such certificate will be required for such an existing commercial solid waste facility which on the effective date of this section held a valid solid waste permit or compliance order issued by the division of natural resources unless such facility increases its spatial land area beyond that authorized by such solid waste permit or compliance order.

(b) The county or regional solid waste authority, or county commission, as appropriate, shall issue or deny the certificate of site approval based upon the consideration of the effects of the proposed commercial solid waste landfill or transfer station upon one or more of the following criteria: The efficient disposal of solid waste generated within the county or region, economic development, transportation facilities, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

(c) The county or regional solid waste authority, or county commission, as appropriate, shall issue or deny the certificate of site approval within a reasonable period upon receiving the pre-siting notice for the proposed commercial solid waste facility required by section five-c, article five-f of this chapter.

(d) The county or regional solid waste authority, or county commission, as appropriate, shall hold a public
hearing prior to the issuance of a certificate of site approval for the purpose of receiving public comment upon the siting of the proposed commercial solid waste facility. The authority shall provide notice of such public hearing with publication of a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is situated.

(e) The county or regional solid waste authority, or county commission, as appropriate, shall complete findings of fact and conclusions relating to the criteria authorized in subsection (b) hereof which support its decision to issue or deny a certificate of site approval.

(f) Any person adversely affected by a decision of a county or regional solid waste authority, or county commission, as appropriate, to issue or deny a certificate of site approval pursuant to this section may appeal that decision to the circuit court for the county in which the proposed commercial solid waste facility would be located.

§20-9-12c. Approval of establishment or continuation of Class A facility by county commission and/or referendum.

(a) If a Class A applicant obtains a certificate of site approval from the county or regional solid waste authority regarding establishing, constructing or operating a commercial solid waste landfill, said applicant shall also file a notice with the county commission of the county within whose boundaries such landfill would be situated or of the county commission where it would be situated if its spatial area covers more than one county. The applicant shall request the approval of the county commission of the affected county to establish, construct or operate such landfill within the county. The county commission must act on such request and either grant or deny its approval within thirty days after the filing of such notice and request. The county commission may hold public hearings and solicit public comment for the purposes of this section.

Following the decision by the county commission and upon the written petition of registered voters residing
in the county equal to not less than fifteen percent of
the number of votes cast within the county for governor
at the preceding gubernatorial election, which petition
shall be filed with the county commission within sixty
days after it has rendered its decision, the county
commission shall, upon verification of the required
number of signatures on the petition, and not less than
fifty-six days before the election, order a referendum be
placed upon the ballot.

Any referendum conducted pursuant to this section
shall be held at the next primary, general or other
county-wide election: Provided, That the election shall
be held within nine months following the decision of the
county commission. If no primary, general or county-
wide election is scheduled within such nine-month
period, then the county commission shall schedule a
special election to be held within such time period.

(1) Such referendum will be to determine whether it
is the will of the voters of the county that a solid waste
facility handling ten thousand tons or more of solid
waste per month be located in the county. Any election
at which the question of locating a solid waste disposal
facility is voted upon shall be held at the voting
precincts established for holding primary or general
elections. All of the provisions of the general election
laws, when not in conflict with the provisions of this
article, shall apply to voting and elections hereunder,
insofar as practicable. The secretary of state shall
prescribe the form of the petition which shall include
the printed name, address and date of birth of each
person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting
machines are used, shall have printed thereon substan-
tially the following:

"Shall a solid waste disposal facility handling ten
thousand tons or more of solid waste per month be
located within ____________ County, West Virginia?

☐ For the Facility

☐ Against the Facility
(Place a cross mark in the square opposite your choice.)"

(3) If a majority of the legal votes cast upon the question be against the siting of a Class A landfill within the county, then the county commission, the county or regional solid waste authority and the division of natural resources shall not proceed any further with the pending notice or application nor may any of them allow to be filed subsequent notices or applications to site a Class A landfill within the county. If a majority of the legal votes cast upon the question be for siting a Class A landfill within the county, then the application process as set forth in this article and article five-f of this chapter may proceed, but such vote shall not be binding on or require the county or regional solid waste authority or the division of natural resources to approve an application to establish, construct or operate a Class A landfill. If the majority of the legal votes cast be against the question, that does not prevent the question from again being submitted to a vote at any subsequent election in the manner herein provided.

(b) Notwithstanding any other provisions of this chapter to the contrary, a person who, on the effective date of this section, holds a valid Class A approval permit or compliance order issued by the division of natural resources, pursuant to article five-f of this chapter, may continue to operate if, by the first day of June, one thousand nine hundred ninety, the county commission of the county in which such facility is located approves the continued handling of ten thousand tons or more of solid waste per month: Provided, That the decision of the county commission is subject to review by referendum of the citizens of the county in which such facility is located.

(1) Any referendum held pursuant to this subsection shall comply with the procedure set forth in subsection (a) of this section. Further, the ballot, or ballot labels where voting machines are used, shall have printed thereon substantially the following: "Shall the __________________ landfill continue to handle ten thousand tons or more of solid waste per month?"
(2) If a majority of the legal votes cast upon the question are against the continued handling of ten thousand tons or more of solid waste per month, or if the county commission disapproves the continued operation of such facility, the director of the division of natural resources shall, within thirty days following certification of the election results, or the decision of the county commission, amend the permit or compliance order to require a decrease, over a period lasting no more than one year, in total tonnage to a level below ten thousand tons of solid waste per month.

§20-9-12d. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

(a) Imposition.—Effective the first day of July, one thousand nine hundred eighty-nine, a solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state to be collected at the rate of one dollar per ton or part thereof of solid waste. The fee imposed by this section shall be in addition to all other fees levied by law.

(b) Collection, return, payment and record.—The fee herein imposed shall be paid by the person disposing of solid waste at a solid waste disposal facility and shall be collected by the operator of such facility and remitted to the state tax commissioner. The fee accrues at the time the solid waste is disposed of in this state. The fee imposed by this section shall be due and payable on or before the fifteenth day of the month next succeeding the month in which the fee accrued together with a return on such form or forms as prescribed by the state tax commissioner. Each person disposing of solid waste
at a solid waste disposal facility and each person
required to collect the fee imposed by this section shall
keep complete and accurate records in such form as the
state tax commissioner may by regulation require.

(c) **Regulated motor carriers.**—The fee imposed by this
section and section twenty-two, article five, chapter
seven of this code shall be considered a necessary and
reasonable cost for motor carriers of solid waste subject
to the jurisdiction of the public service commission
under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary,
upon the filing of a petition by an affected motor carrier,
the public service commission shall, within fourteen
days, reflect the cost of said fee in said motor carrier's
rates for solid waste removal service.

(d) **Definition of solid waste disposal facility.**—For
purposes of this section, the term "solid waste disposal
facility" means any approved solid waste facility or open
dump in this state. Nothing herein shall be construed
to authorize in any way the creation or operation of or
contribution to an open dump.

(e) **Exemptions.**—The following transactions shall be exempt from the fee imposed by this section:

1. Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

2. Reuse or recycling of any solid waste; and

3. Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of natural resources by regulation as exempt from the fee imposed pursuant to section five-a, article five-f, chapter twenty of this code.

(f) **Procedure and administration.**—Each and every
provision of the "West Virginia Tax Procedure and
Administration Act" set forth in article ten, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) Criminal penalties.—Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.

(h) Dedication of proceeds.—The net proceeds of the fee collected pursuant to this section shall be transferred to a special revenue account designated as the "Solid Waste Planning Fund" as such proceeds are received by the state tax commissioner. The West Virginia state solid waste management board shall allocate the proceeds of the said fund as follows:

(1) Fifty percent of the total proceeds shall be divided equally among, and paid over to, each county solid waste authority to be expended for the purposes of this article: Provided, That where a regional solid waste authority exists, such funds shall be paid over to the regional solid waste authority to be expended for the purposes of this article in an amount equal to the total share of all counties within the jurisdiction of said regional solid waste authority; and

(2) Fifty percent of the total proceeds shall be expended by the West Virginia state solid waste management board for: (i) Grants to the county or regional solid waste authorities for the purposes of this article; (ii) administration, technical assistance or other costs of the state solid waste management board necessary to implement the purposes of this article and article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(i) Severability.—If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such
§20-11-5. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.

(a) A comprehensive recycling program for solid waste may be established in any county of this state by action of a county commission in accordance with the provisions of this section. Such program shall require:

(1) That, prior to collection at its source, all solid
waste shall be segregated into separate identifiable recyclable materials by each person, partnership, corporation and governmental agency subscribing to a solid waste collection service in the county or transporting solid waste to a commercial solid waste facility in the county;

(2) That each commercial solid waste facility located in the county and each person engaged in the commercial collection, transportation, processing or disposal of solid waste within the county shall accept only such solid waste from which recyclable materials in accordance with said county's comprehensive recycling program have been segregated; and

(3) That the provisions of the recycling plan prepared pursuant to section four of this article shall, to the extent practicable, be incorporated in said county's comprehensive recycling program.

(b) For the purposes of this article, recyclable materials shall include, but not be limited to, steel and bi-metallic cans, aluminum, glass, paper and such other solid waste materials as may be specified by the county commission with the advice of the county or regional solid waste authority.

(c) A comprehensive recycling program for solid waste may be established in any county of this state by:

(1) A petition filed with the county commission bearing the signatures of registered voters of the county equal to not less than five percent of the number of votes cast within the county for governor at the preceding gubernatorial election; and (2) approval by a majority of the voters in a subsequent referendum on the issue. A referendum to determine whether it is the will of the voters of a county that a comprehensive recycling program for solid waste be established in the county may be held at any regular primary or general election or in conjunction with any other countywide election. Any election at which the question of establishing a policy of comprehensive recycling for solid waste is voted upon shall be held at the voting precincts established for holding primary or general elections. All
of the provisions of the general election laws, when not
in conflict with the provisions of this article, shall apply
to voting and elections hereunder, insofar as practicable.
The secretary of state shall prescribe the form of the
petition which shall include the printed name, address
and date of birth of each person whose signature
appears on the petition. Upon verification of the
required number of signatures on the petition, the
county commission shall, not less than seventy days
before the election, order that the issue be placed on the
ballot and referendum held at the next primary, general
or special election to determine whether it is the will of
the voters of said county that a policy of comprehensive
recycling of solid waste be established in the county:
Provided, That the petition bearing the necessary
signatures has been filed with the county commission at
least one hundred days prior to the election.

The ballot, or the ballot labels where voting machines
are used, shall have printed thereon substantially the
following:

"Shall the County Commission be required to establish
a comprehensive recycling program for solid waste in
__________________________ County, West Virginia?

☐ For Recycling
☐ Against Recycling

(Place a cross mark in the square opposite your
choice.)"

If a majority of legal votes cast upon the question be
for the establishment of a policy of comprehensive
recycling of solid waste, the county commission shall,
after the certification of the results of the referendum,
thereafter establish by ordinance a comprehensive
recycling program for solid waste in the county within
ninety days of said certification. If a majority of the
legal votes cast upon the question be against the
establishment of a policy of comprehensive recycling of
solid waste, said policy shall not take effect, but the
question may again be submitted to a vote at any
subsequent election in the manner herein provided.
(d) A comprehensive recycling program for solid waste established by petition and referendum may be rescinded only pursuant to the procedures set out herein to establish the program.

To rescind the program, the ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“Shall the County Commission be required to terminate the comprehensive recycling program for solid waste in __________ County, West Virginia?

☐ Continue Recycling
☐ End Recycling

(Place a cross mark in the square opposite your choice.)”

(e) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within ninety days of said certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, said ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

CHAPTER 171

(Com. Sub. for S. B. 92—By Senators Brackenrich and Spears)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to scheduling governmental agencies or programs for termination pursuant to the West Virginia sunset law.
Be it enacted by the Legislature of West Virginia:

That section four, article ten, 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 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs shall be terminated on the date indicated but no governmental entity or program shall be terminated under this article unless a performance audit has been conducted of such entity or program, except as authorized under section fourteen of this article:

(1) On the first day of July, one thousand nine hundred eighty-one: Judicial council of West Virginia; motor vehicle certificate appeal board; child welfare licensing board.

(2) On the first day of July, one thousand nine hundred eighty-two: Ohio River basin commission; commission on postmortem examination; state commission on manpower, training and technology.

(3) On the first day of July, one thousand nine hundred eighty-three: Anatomical board; economic opportunity advisory committee; community development authority board.

(4) On the first day of July, one thousand nine hundred eighty-four: The following programs of the department of natural resources: Rabies control, work incentive program; West Virginia alcoholic beverage control licensing advisory board.

(5) On the first day of July, one thousand nine hundred eighty-five: Beautification commission; labor management advisory council.

(6) On the first day of July, one thousand nine hundred eighty-six: Health resources advisory council.

(7) On the first day of July, one thousand nine
(8) On the first day of July, one thousand nine hundred eighty-eight: Veteran's council; labor management relations board; records management and preservation advisory committee; minimum wage rate board; commission on mass transportation; and the public employees insurance board.

(9) On the first day of July, one thousand nine hundred eighty-nine: Mental retardation advisory committee; board of school finance; veteran's affairs advisory council; and the reclamation commission.

(10) On the first day of July, one thousand nine hundred ninety: Consumer affairs advisory council; savings and loan association; forest industries industrial foundation; and drivers' license advisory board.

(11) On the first day of July, one thousand nine hundred ninety-one: State advisory council of the division of employment security; department of health and human resources; oil and gas conservation commission; the family law masters system; state lottery commission; the department of commerce, labor and environmental resources; West Virginia health care cost review authority; the following divisions or programs of the department of agriculture: Soil conservation committee, rural resource division, meat inspection program; interagency committee on pesticides; pesticides board of review; and the geological and economic survey; women's commission, child advocate office, department of health and human resources; the division of corrections; and the office of workers' compensation commissioner.

(12) On the first day of July, one thousand nine hundred ninety-two: State water resources board; water resources division, division of natural resources; white-water advisory board; state board of risk and insurance management; West Virginia's membership in the interstate commission on the Potomac River basin; board of banking and financial institutions; the farm
management commission; state building commission; the capitol building commission; the board of examiners in counseling; and the public service commission:

Provided, That in the case of the public service commission, the performance and fiscal audit required by this article shall be completed and transmitted to the joint committee on government and finance on or before the first day of July, one thousand nine hundred ninety-one, in order that the joint committee or its designated subcommittee may review the audit pursuant to the provisions of section one, article one, chapter twenty-four of this code.

(13) On the first day of July, one thousand nine hundred ninety-three: Commission on uniform state laws; state structural barriers compliance board; and the oil and gas inspectors examining board.

(14) On the first day of July, one thousand nine hundred ninety-four: Ohio River valley water sanitation commission; the southern regional education board; real estate commission; the division of labor and the section of archives and history of the division of culture and history.

(15) On the first day of July, one thousand nine hundred ninety-five: Emergency medical services advisory council; commission on charitable organizations; information system advisory commission; and the board of social work examiners.

(16) On the first day of July, one thousand nine hundred ninety-six: U.S. geological survey program within the division of natural resources; and the board of investments.

CHAPTER 172

(Com. Sub. for H. B. 4127—By Delegates Sattes and Susman)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new article, designated article one-c; to amend article eight of said chapter eleven by adding thereto two new sections, designated sections six-e and six-f; and to amend and reenact section eleven, article nine-a, chapter eighteen of said code, all relating to taxation and property valuation; reciting legislative findings; defining terms; creating property valuation training and procedures commission; providing for composition of commission, terms of members and their compensation; prescribing powers and duties of commission; authorizing commission to borrow from board of investments; authorizing commission to make rules; requiring certain training for assessors, their staffs and county commissioners; specifying certain duties of county assessors relating to appraisal of property; prescribing additional powers and duties of tax commissioner relating to property valuation; providing for additional funding for assessors' offices; requiring periodic valuations of property; providing criminal penalties for failure to list property or file return or report; creating classification designated managed timberland; requiring assessment at certain percent of appraisal value for all property including property assessed by board of public works; providing severability clause; requiring reduction in levy rate when appraisal results in tax increase; requiring notice and public hearing prior to decision in lieu of such reduction by county commissions and municipalities; providing that Legislature effects any increase of school board levy rate after public hearing; transferring certain existing duties regarding appraisal to new article one-c; providing for total assessed taxable value for next fiscal year; and deleting outdated provisions of code.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-c; that article eight of said chapter eleven be amended by adding thereto two new sections, designated sections six-e and six-f; and that section eleven, article nine-a, chapter eighteen of said code, be amended and reenacted, all to read as follows:
Chapter
11. Taxation.
18. Education.

CHAPTER 11. TAXATION.

Article
1C. Fair and Equitable Property Valuation.
8. Levies.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-1. Legislative findings.
§11-1C-2. Definitions.
§11-1C-3. Property valuation training and procedures commission generally; appointment; term of office; meetings; compensation.
§11-1C-4. Commission powers and duties; rule making.
§11-1C-5. Tax commissioner powers and duties.
§11-1C-6. Required training for assessors, their staffs and county commissioners.
§11-1C-7. Duties of county assessors; property to be appraised at fair market value; exceptions; initial equalization; valuation plan.
§11-1C-8. Additional funding for assessors' offices; maintenance funding.
§11-1C-10. Valuation of industrial property and natural resources property by tax commissioner; penalties; methods; values sent to assessors.
§11-1C-11. Managed timberland.
§11-1C-12. Board of equalization and review; assessments; board of public works.

§11-1C-1. Legislative findings.

(a) The Legislature hereby finds and declares that all property in this state should be fairly and equitably valued wherever it is situated so that all citizens will be treated fairly and no individual species or class of property will be overvalued or undervalued in relation to all other similar property within each county and throughout the state.

(b) The Legislature by this article seeks to create a method to establish and maintain fair and equitable values for all property. The Legislature does not intend by this article to implement the reappraisal as conducted under articles one-a and one-b of this chapter, nor does it intend to affect tax revenue in any manner.

(c) The Legislature finds that requiring the valuation of property to occur in three-year cycles with an annual
adjustment of assessments as to those properties for which a change in value is discovered shall not violate the equal and uniform provision of section one, article ten of the West Virginia Constitution, the Legislature further finding that such three-year cycle and annual adjustment are an integral and indispensable part of a systematic review of all properties in order to achieve equality of assessed valuation within and among the counties of this state.

(d) The Legislature deems that the goal of this article is that by the end of the three-year cycle contemplated by this article, and thereafter from year to year, all property shall be annually assessed at sixty percent of its then current fair market value except for the values derived for farms and managed timberland properties, which are to be valued as prescribed by articles one-c and four of this chapter.

§11-lC-2. Definitions.

For the purposes of this article, the following words shall have the meanings hereafter ascribed to them unless the context clearly indicates otherwise:

(a) "Timberland" means any surface real property except farm woodlots of not less than ten contiguous acres which is primarily in forest and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site.

(b) "Managed timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site, and that is managed pursuant to a plan provided for in section ten of this article.

(c) "Tax commissioner", "commissioner", or "tax department" means the state tax commissioner or a designee of the state tax commissioner.
(d) "Valuation commission" or "commission" means the commission created in section three of this article.

(e) "County board of education" or "board" means the duly elected board of education of each county.

§11-1C-3. Property valuation training and procedures commission generally; appointment; term of office; meetings; compensation.

(a) There is hereby created, under the department of tax and revenue, a property valuation training and procedures commission which consists of the state tax commissioner, or a designee, who shall serve as chairperson of the commission, three county assessors, four citizens of the state, one of which shall be a certified appraiser, and two county commissioners. The assessors, four citizen members and two county commissioners shall be appointed by the governor with the advice and consent of the Senate. For each assessor to be appointed, the West Virginia Assessors Association shall nominate three assessors, no more than two of whom shall belong to the same political party, and shall submit such list of nominees to the governor. For each of the two county commissioners to be appointed, the County Commissioner's Association of West Virginia shall nominate three commissioners, no more than two of whom shall belong to the same political party, and shall submit such list of nominees to the governor. Except for the tax commissioner, there may not be more than one member from any one county. No more than seven members of the commission shall belong to the same political party: Provided, That any member of the commission who is a direct party to any dispute before the board shall excuse himself or herself from any consideration or vote regarding the dispute.

A list of nine assessor nominees shall be submitted to the governor by the assessors association within thirty days of the effective date of this article, and not more than six of such nominees shall belong to the same political party. Within sixty days of such effective date, the governor shall appoint the assessor and citizen members of the commission.
A list of six county commissioner nominees shall be submitted to the governor by the county commissioners association within thirty days of the effective date of this article, and not more than four of such nominees shall belong to the same political party. Within sixty days of such effective date, the governor shall appoint two county commission members of the commission.

(b) All members, except the tax commissioner, shall serve for four-year terms: Provided, That of the members initially appointed, two assessors, one county commission member and one citizen shall serve two-year terms, and one assessor, one county commissioner member and three citizen members shall serve four-year terms. Any assessor member and county commissioner member ceases to be a member immediately upon leaving the office of assessor or county commissioner. Members shall remain members of the commission until their successors have been appointed. In case of a vacancy occurring prior to the end of the term of a member, a replacement shall be appointed within thirty days in the same manner as the member was appointed and shall serve until the end of the term of the member so replaced.

(c) The tax commissioner shall call the first meeting of the commission within thirty days of the appointment of the assessor, county commissioner and citizen members. Subsequently, meetings shall be at the call of the chairperson or at the written request of any four members, except that the commission shall meet at least twice annually. Assessor members, county commissioner members and the tax commissioner shall serve without compensation, and citizen members shall receive fifty dollars per day for each day of actual service rendered. All members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the commission.

(d) The commission shall be funded by an appropriation by the Legislature through a separate line item appropriated to the state tax commissioner.
§11-1C-4. Commission powers and duties; rule making.

(a) On or before the first day of October, one thousand nine hundred ninety, and thereafter as necessary, the property valuation training and procedures commission shall perform the following duties:

(1) Devise training and certification criteria for county assessors and their employees and members of county commissions, which shall include a definition of "appropriate staff member" as the term is used in section six of this article relating to required training, which definition shall include deputy assessors as provided for in section three, article two of this chapter;

(2) Establish uniform, statewide procedures and methodologies for the mapping, visitation, identification and collection of information on the different species of property, which procedures and methodologies shall include reasonable requirements for visitation of property, including a requirement that a good faith effort be made to contact any owner of owner-occupied residential property: Provided, That the commission is not authorized to establish the methods to value real and personal property, but shall have the authority to approve such methods;

(3) Develop an outline of items to be included in the county property valuation plan required in section seven of this article, which shall include information to assist the property valuation training and procedures commission in its determination of the distribution of state funds provided pursuant to section eight of this article.

(b) On or before the first day of July, one thousand nine hundred ninety-one, the commission shall establish objective criteria for the evaluation of the performance of the duties of county assessors and the tax commissioner.

(c) In the event the tax commissioner and a county assessor cannot agree on the content of the plan required under section seven of this article, the commission shall examine the plan and the objections of the tax commissioner and shall resolve the dispute on or before the first
day of the fiscal year following the fiscal year in which
the plan was submitted to the commission for resolution.

(d) The commission shall have the power to make such
rules as it deems necessary to carry out the provisions
of this section. Any rules adopted by the commission
prior to the first day of October, one thousand nine
hundred ninety, under subsection (a) of this section are
exempt from the provisions of article three of chapter
twenty-nine-a of this code: Provided, That the commis-
sion shall file a copy of any rule so exempted from the
provisions of chapter twenty-nine-a of this code with the
legislative rule-making review committee created
pursuant to section eleven, article three of said chapter
prior to the thirtieth day of November, one thousand
nine hundred ninety.

(e) The commission shall have the authority to make
and enter into all contracts and agreements necessary
or incidental to the performance of its duties and the
execution of its powers under this article.

(f) In order to fund the costs of the requirements of
this article, the valuation commission shall have the
authority, on a one time basis, to borrow five million
dollars and to distribute such funds according to need
and the valuation plan submitted by the counties. Upon
request of the valuation commission, the state board of
investments shall loan, under commercially reasonable
terms to be determined by the parties, up to five million
dollars to the valuation commission, on a one time basis,
from one of the various funds administered by the state
board of investments.

(g) The commission shall be required, in the event
that the tax commissioner has failed to do so, to appoint
one or more special assessors if it is the determination
of the commission that an assessor has substantially
failed to perform the duties required by sections seven
and eight of this article. A writ of mandamus shall be
the proper remedy if the commission fails to perform
any of its duties required by law.
§11-1C-5. Tax commissioner powers and duties.

(a) In addition to the powers and duties of the tax commissioner in other provisions of this article and this code, the tax commissioner shall have the power and duty to:

(1) Perform such duties and exercise such powers as may be necessary to accomplish the purposes of this article;

(2) Determine the methods of valuation for both real and personal property in accordance with the following:

(A) As to personal property, the tax commissioner shall provide a method to appraise each major specie of personal property in the state so that all such items of personal property are valued in the same manner no matter where situated in the state, shall transmit these methods to each county assessor who shall use these methods to value the various species of personal property. The tax commissioner shall periodically conduct such studies as are necessary to determine that such methods are being followed. Such method shall be in accordance with the provisions of article five of this chapter: Provided, That notwithstanding any other provision of this code to the contrary, the several county assessors shall appraise motor vehicles as follows: The state tax commissioner shall annually compile a schedule of automobile values based upon the lowest values shown in a nationally accepted used car guide, which said schedule shall be furnished to each assessor and shall be used by the several county assessors to determine the assessed value for all motor vehicles in an amount equal to sixty percent of said lowest values.

(B) As to managed timberland as defined in section two of this article, the tax commissioner shall provide a method to appraise such property in the state so that all such property is valued in the same manner no matter where it is situated in the state, which shall be a valuation based on its use and productive potential as managed timberland, which may be accorded special valuation as forestlands as authorized by section fifty-three, article six of the Constitution of West Virginia: Provided, That timberland that does not qualify for
identification as managed timberland shall be valued at market value: Provided, however, That the tax commis-
sioner may not implement any rules or regulations in title one hundred ten, which relate to valuation or classification of timberland: Provided further, That on or before the first day of October, one thousand nine hundred ninety, the tax commissioner shall, in accor-
dance with chapter twenty-nine-a of this code, promul-
gate new rules relating to the valuation and classifica-
tion of timberland.

(C) As to farmland used, occupied and cultivated by an owner or bona fide tenant, the tax commissioner shall provide a method to appraise such property in the state so that all such property is valued in the same manner no matter where it is situated in the state, which valuation shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose, in accordance with section one, article three of this chapter and as authorized by subsection B, section one-
b, article X of the Constitution of West Virginia.

(D) As to public utility property, the tax commis-
sioner shall prescribe appropriate methods for the appraisal of the various types of property subject to taxation as public utilities and the types of property which are to be included in the operating property of a public utility and thereby not subject to taxation by the county assessor. Only parcels or other property, or portions thereof, which are an integral part of the public utility's function as a utility shall be included as operating property and assessed by the board of public works under provisions of article six of this chapter;

(3) Evaluate the performance of each assessor based upon the criteria established by the commission and each county's approved plan and take appropriate measures to require any assessor who does not meet these criteria or adequately carry out the provisions of the plan to correct any deficiencies. Such evaluation shall include the periodic review of the progress of each assessor in conducting the appraisals required in
sections seven and nine of this article and in following
the approved valuation plan. If the tax commissioner
determines that an assessor has substantially failed to
perform the duties required by said sections, the tax
commissioner shall take all necessary steps, including
the appointment of one or more special assessors in
accordance with the provisions of section one, article
three of this chapter, or utilize such other authority as
the commissioner has over county assessors pursuant to
other provisions of this code as may be necessary to
complete the tasks and duties imposed by this article:
Provided, That a writ of mandamus shall be the
appropriate remedy if the tax commissioner fails to
perform his or her statutory duty provided for in section
five, article one of this chapter;

(4) Submit to the Legislature, on or before the
fifteenth day of February of each year, a preliminary
statewide aggregate tax revenue projection and other
information which shall assist the Legislature in its
deliberations regarding county board of education levy
rates pursuant to section six-f, article eight of this
chapter, which information shall include any amount of
reduction required by said section six-f;

(5) Maintain the valuations each year by making or
causing to be made such surveys, examinations, audits
and investigations of the value of the several classes of
property in each county which should be listed and
taxed under the several classifications; and

(6) Establish by uniform rules a procedure for the
sale of computer generated material, appraisal manuals
and reproduction of microfilm, photography and maps.
Any funds received as a result of the sale of such
reproductions shall be deposited to the appropriate
account from which the payment for reproduction is
made.

(b) The tax commissioner may adopt any regulation
adopted prior to the first day of January, one thousand
nine hundred ninety, pursuant to article one-a of this
chapter, which adoption shall not constitute an imple-
mentation of the statewide mass reappraisal of property.
Such adoption, including context modifications made necessary by the enactment of this article, shall occur on or before the first day of July, one thousand nine hundred ninety-one, through inclusion in the plan required by section ten of this article or inclusion in the minute record of the valuation commission. Upon the adoption of any such regulations, any modification or repeal of such regulation shall be in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§11-1C-6. Required training for assessors, their staffs and county commissioners.

(a) All county assessors and their appropriate staff members are required to participate in a training program which meets the basic criteria set by the property valuation training and procedures commission. The tax commissioner shall provide the training programs, which shall commence on or before the first day of December, one thousand nine hundred ninety. The tax commissioner shall determine which persons have met the basic criteria established by the property valuation training and procedures commission for certification in their respective positions. Those persons who have met the basic criteria shall be issued appropriate certificates so signifying. Those persons who have failed to meet the basic criteria shall be required to take additional training in those areas in which they are deficient. Any staff person employed as of the effective date of this section who fails to meet the basic criteria within one calendar year of his or her first training shall be placed on probationary status for six months and, upon continued failure to meet the criteria, shall be dismissed of any duties related to the actual valuation of property. Any staff person employed after the effective date of this section shall become certified within six months of his or her first training, and otherwise shall be placed on probationary status for six months and, unless becoming certified, shall be dismissed of any duties related to the actual valuation of property. The tax commissioner shall conduct periodic training sessions of a continuing education nature for all
assessors and appropriate staff members whether
certified or not. These sessions shall be held at least once
a year. All newly elected or newly appointed assessors
shall participate in a basic training program prior to
taking office. Newly appointed appropriate staff
members are required to participate in the next
available basic training program. The commission shall
further establish requirements for minimum continuing
education for each appropriate staff member in order
to maintain a certification.

(b) All county commissioners are required to partic-
ipate in a training program which meets the criteria set
by the property valuation training and procedures
commission. The tax commissioner shall conduct such
programs to educate county commissioners in their
duties as a board of equalization and review and to make
them generally familiar with appraisal techniques.

§11-1C-7. Duties of county assessors; property to be
appraised at fair market value; exceptions;
initial equalization; valuation plan.

(a) Except for property appraised by the state tax
commissioner under section ten of this article and
property appraised and assessed under article six of this
chapter, all assessors shall, within three years of the
approval of the county valuation plan required pursuant
to this section, appraise all real and personal property
in their jurisdiction at fair market value except for
special valuation provided for farmland and managed
timberland. They shall utilize the procedures and
methodologies established by the property valuation
training and procedures commission and the valuation
system established by the tax commissioner.

(b) In determining the fair market value of the
property in their jurisdictions, assessors may use as an
aid to valuation any information available on the
character and values of such property including, but not
limited to, the updated information found on any
statewide electronic data processing system network
established pursuant to section twenty-one, article one-
a of this chapter. Valuations shall not be based exclu-
Chapter 172

TAXATION

21 sively on such statewide electronic data processing
system network, and usage of the information on such
files as an aid to proper valuation shall not constitute
an implementation of the statewide mass reappraisal of
property.

(c) Before beginning the valuation process, each
assessor shall develop a county valuation plan for using
information currently available, for checking its
accuracy and for correcting any errors found. The plan
must be submitted to the tax commissioner on or before
the first day of December, one thousand nine hundred
ninety, for review and approval, and such plan must be
revised as necessary and resubmitted every three years
thereafter. Whenever a plan is submitted to the tax
commissioner, a copy shall also be submitted to the
county commission of that county and the property
valuation training and procedures commission, and that
county commission and the property valuation training
and procedures commission may forward comments to
the tax commissioner. The tax commissioner shall
respond to any plan submitted or resubmitted within
sixty days of its receipt. The valuation process shall not
begin nor shall funds provided in section eight of this
article be available until the plan has received approval
by the tax commissioner: Provided, That any initial plan
that has not received approval by the commissioner
prior to the first day of May, one thousand nine hundred
ninety-one, shall be submitted on or by such date to the
valuation commission for resolution prior to the first day
of July, one thousand nine hundred ninety-one, by which
date all counties shall have an approved valuation plan
in effect.

(d) Upon approval of the valuation plan, the assessor
shall immediately begin implementation of the valuation
process. Any change in value discovered subsequent to
the certification of values by the assessor to the county
commission, acting as the board of equalization and
review, in any given year shall be placed upon the
property books for the next certification of values.

(e) Willing and knowing refusal of the assessor or the
county commission to comply with and effect the
provisions of this article, or to correct any deficiencies
as may be ordered by the tax commissioner with the
concurrency of the valuation commission under any
authority granted pursuant to this article or other
provisions of this code, shall constitute grounds for
removal from office. Such removal may be appealed to
the circuit court.

§11-1C-8. Additional funding for assessors' offices;
maintenance funding.

(a) In order to finance the extra costs associated with
the valuation and training mandated by this article,
there is hereby created a revolving valuation fund in
each county which shall be used exclusively to fund the
assessor's office. The valuation and training programs,
for the fiscal year commencing on the first day of July,
one thousand nine hundred ninety, shall be funded
through the valuation commission and distributed in
accordance with need on a county by county basis and
the county's approved plan. The necessary funds shall
be transferred to each county's valuation fund following
approval of the plans submitted by the respective
assessors. The said funds shall be transferred by the
valuation commission on condition that no persons shall
be hired hereunder without the approval of the valua-
tion commission and suchhirings shall be without
regard to political favor or affiliation. And further, such
persons hired hereunder shall be subject to the provi-
sions of the ethics act, chapter six-b of this code,
including, but not limited to, the conflict of interest
provisions thereunder.

During the fiscal year commencing the first day of
July, one thousand nine hundred ninety-four, and
thereafter as necessary, any county receiving moneys
provided by the valuation commission under this section,
shall use the county's valuation fund first to repay the
valuation commission the money so received plus
accrued interest, provided that the fund should not drop
below one percent of the total municipal, county
commission and county school board revenues generated
by application of the respective regular levy rates.
(b) To finance the ongoing extra costs associated with the valuation and training mandated by this article, beginning with the fiscal year commencing on the first day of July, one thousand nine hundred ninety-one, and for a period of three consecutive years, an amount equal to two percent of the previous year's projected tax collections from the regular levy set by, or for, the county commission, the county school board and any municipality in the county shall be prorated as to each levying body, set aside and placed in the valuation fund. Commencing on the first day of July, one thousand nine hundred ninety-four, and each year thereafter, the valuation fund shall be continued at an annual amount of one percent of the previous year's projected tax collections from such regular levies: Provided, That county commissions and municipalities may present written evidence, prior to the thirty-first day of March each year, acceptable to the valuation commission showing that a lesser amount would be adequate to fund the extra costs associated with the valuation mandated by section seven of this article: Provided, however, That the valuation commission shall meet prior to the fifteenth day of April to consider and decide upon all written evidence so submitted: Provided further, That the county commissions, in addition, shall fund the county assessor's office at least the level of funding provided during the fiscal year in which this section was initially enacted.

These additional funds are intended to enable assessors to maintain current valuations and to perform the periodic reevaluation required under section nine of this article. Beginning with the fiscal year ending June thirtieth, one thousand nine hundred ninety-six, any unexpended balance in the valuation fund at the end of the fiscal year shall expire back proportionately into the respective accounts of the levying bodies.

(c) Any funds provided by the valuation commission shall be distributed among the counties by the property valuation training and procedures commission based upon workload, need and other relevant factors as shown
by the valuation plans developed under section seven of this article.

(d) Moneys due the valuation fund shall be deposited by the sheriff of the county on a monthly basis for the benefit of the assessor and shall be available to and may be spent by the assessor without prior approval of the county commission, which shall not exercise any control over the fund.


(a) After completion of the initial valuation required under section seven of this article, each assessor shall maintain current values on the real and personal property within the county. In repeating three-year cycles, every parcel of real property shall be visited by a member of the assessor’s staff who has been trained pursuant to section six of this article to determine if any changes have occurred which would affect the valuation for the property. With this information and information such as sales ratio studies provided by the tax commissioner, the assessor shall make such adjustments as are necessary to maintain accurate, current valuations of all the real and personal property in the county and shall adjust the assessments accordingly.

(b) In any year the assessed value of a property or species of property be less than or exceed sixty percent of current market value, the tax commissioner shall direct the assessor to make the necessary adjustments. If any assessor fails to comply with the provisions of this section, the tax commissioner may, at the county commission's expense, take reasonable steps to remedy the assessment deficiencies.

§11-1C-10. Valuation of industrial property and natural resources property by tax commissioner; penalties; methods; values sent to assessors.

(a) As used in this section:

(1) "Industrial property" means real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.
(2) "Natural resources property" means coal, oil, natural gas, limestone, fireclay, dolomite, sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil shale, managed timberland as defined in section two of this article, and other minerals.

(b) All owners of industrial property and natural resources property each year shall make a return to the state tax commissioner and, if requested in writing by the assessor of the county where situated, to such county assessor at a time and in the form specified by the commissioner of all industrial or natural resources property owned by them. The commissioner may require any information to be filed which would be useful in valuing the property covered in the return. Any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report may be applied to any owner of property required to make a return pursuant to this section.

(c) The state tax commissioner shall value all industrial property in the state at its fair market value within three years of the approval date of the plan for industrial property required in subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The tax commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the landbook or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

(d) Within three years of the approval date of the plan required for natural resources property required pursuant to subsection (e) of this section, the state tax commissioner shall determine the fair market value as defined in section one, article three of this chapter of all natural resources property in the state. The commis-
sioner shall thereafter maintain accurate values for all such property.

(1) In order to qualify for identification as managed timberland for property tax purposes the owner must annually certify, in writing to the division of forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner's certification must state that forest management practices will be conducted in accordance with approved practices from the publication "Best Management Practices for Forestry." Property certified as managed timberland shall be valued according to its use and productive potential. The tax commissioner shall promulgate rules and regulations for certification as managed timberland.

(2) In the case of all other natural resources property, the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state department of energy. Any information supplied by natural resources owners or any proprietary or otherwise privileged information supplied by the state division of energy shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The tax commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the landbook or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend any
challenged appraisal when the assessed value of the property in question exceeds two million dollars or an owner challenging an appraisal holds or controls property situated in the same county with an assessed value exceeding two million dollars. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

(e) The tax commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before the first day of January, one thousand nine hundred ninety-one, for its approval on or before the first day of July of such year. Such plan shall be revised, resubmitted to the commission and approved every three years thereafter.

(f) To perform the valuation duties under this section, the state tax commissioner shall have the authority to contract with a competent property appraisal firm or firms to assist with or to conduct the valuation process as to any discernible species of property statewide if the contract and the entity performing such contract is specifically included in a plan required by subsection (e) of this section or otherwise approved by the commission. If the tax commissioner desires to contract for valuation services only in one county or a group of counties, the contract must be approved by the assessor of the county and by the commission.

(g) The county assessor may accept the appraisal provided, pursuant to this section, by the state tax commissioner: Provided, That if the county assessor fails to accept the appraisal provided by the state tax commissioner, the county assessor shall show just cause to the valuation commission for the failure to accept such appraisal and shall further provide to the valuation
commission a plan by which a different appraisal will be conducted.

(h) The tax commissioner may charge each county assessor's office the costs of appraising the industrial and natural resources property within that county, and any costs of defending same: Provided, That the office of the state attorney general shall provide legal representation on behalf of the tax commissioner or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged in court. Such charges shall be paid from the county valuation fund. Any moneys so received from the counties shall be placed in a revolving state fund established in the state treasurer's office and shall be expended only to carry out the duties imposed upon the commissioner under this section.

(i) For purposes of revaluing managed timberland as defined in section two of this article, any increase or decrease in valuation by the commissioner shall not become effective prior to the first day of July, one thousand nine hundred ninety-one. The property owner may request a hearing by the director of the division of forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property. A property owner may appeal a disqualification to the circuit court in which the property is located.

§11-1C-11. Managed timberland.

Upon request of state, county or other taxing authorities of appropriate jurisdiction, the division of forestry shall inspect property under contract as managed timberland and determine whether or not such properties do qualify. In the event that a property is found not to qualify by reason of a change in use, or it is discovered that a material misstatement of fact was made by the owner in the certification required in subdivision (1), subsection (d), section ten of this article, the division of forestry shall notify the state tax commissioner that the property is disqualified from its identification as managed timberland.
§11-1C-12. Board of equalization and review; assessments; board of public works.

(a) As valuations of property in a county are completed to the extent that a total valuation for each class of property can be determined, such valuation shall be delivered by the assessor to the county commission, and the county commission, sitting as a board of equalization and review, shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes of the several classes of property.

(b) For the tax year subsequent to the end of the initial valuation period in each county, and for each year thereafter, each county shall implement a uniform assessment that is equal to sixty percent of the most current appraised value for all real and personal property situated within the county. Such implementation shall be in accordance with provisions to be included in the plan required by section seven of this article.

(c) Until such time as the uniform sixty percent assessment required in subsection (b) is effected, the total assessed valuation in each of the four classes of property shall not be less than sixty percent nor more than one hundred percent of the appraised valuation of each said class of property.

(d) The board of public works, in performing the duties required in article six of this chapter relating to the assessment of public service businesses, shall submit on or before the first day of January, one thousand nine hundred ninety-one, a plan to the property valuation training and procedures commission for implementing on or before the first day of July, one thousand nine hundred ninety-four, and for each year thereafter, a uniform assessment that is equal to sixty percent of the most current valuation for all property valued by the board of public works. Such plan shall be approved on or before the first day of July, one thousand nine hundred ninety-one.

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

ARTICLE 8. LEVIES.

§11-8-6e. Effect on levy rate when appraisal results in tax increase; public hearings.

§11-8-6f. Effect on school board levy rate when appraisal results in tax increase.

§11-8-6e. Effect on levy rate when appraisal results in tax increase; public hearings.

(a) Notwithstanding any other provision of law, where any annual appraisal, triennial appraisal or general valuation of property would produce an assessment that would cause an increase of one percent or more in the total projected property tax revenues that would be realized were the then current levy rates by the county commission and the municipalities to be imposed, the rate of levy shall be reduced proportionately as between the county commission and the municipalities and for all classes of property for the forthcoming tax year so as to cause such rate of levy to produce no more than one hundred one percent of the previous year's projected property tax revenues from extending the county commission and municipality levy rates, unless there has been compliance with subsection (c) of this section. An additional appraisal or valuation due to new construction or improvements to existing real property, including beginning recovery of natural resources, and newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in the reduced levy calculation set forth in subsection (b) of this section, but shall be continued for the remainder of the established period on the basis of
the property values and levy rates in effect on the
effective date of this bill.

(b) The reduced rates of levy shall be calculated in the
following manner:

(1) The total assessed value of each class of property
as is defined by section five, article eight of this chapter
for the assessment period just concluded shall be
reduced by deducting the total assessed value of newly
created properties not assessed in the previous year's tax
book for each class of property;

(2) The resulting net assessed value of Class I
property shall be multiplied by .01; the value of Class
II by .02; and the values of Class III and IV, each by
.04;

(3) Total the current year's property tax revenue
resulting from regular levies for each county commis-
sion and municipality and multiply the resulting sum by
one hundred one percent: Provided, That the one
hundred one percent figure shall be increased by the
amount the county's or municipality's increased levy
provided for in subsection (b), section eight, article one-
c of this chapter.

(4) Divide the total regular levy tax revenues, thus
increased in subdivision (3), above, by the total weighted
net assessed value as calculated in paragraph two of this
section and multiply the resulting product by one
hundred; the resulting number is the Class I regular
levy rate, stated as cents-per-one hundred dollars of
assessed value;

(5) The Class II rate is two times the Class I rate;
Classes III and IV, four times the Class I rate as
calculated in the preceding subdivision.

(c) The governing body of a county or municipality
may, after conducting a public hearing, which may be
held at the same time and place as the annual budget
hearing, increase the rate above the reduced rate
required in this section if any such increase is deemed
to be necessary by such governing body: Provided, That
in no event shall the governing body of a county or municipality increase the rate above the reduced rate required by subsection (b) of this section for any single year in a manner which would cause total property tax revenues accruing to the governing body of the county or municipality, excepting additional revenue attributable to assessed valuations of newly created properties not assessed in the previous year’s tax book for each class of property, to exceed by more than ten percent those property tax revenues received by the governing body of the county or municipality for the next preceding year: Provided, however, That this provision shall not restrict the ability of a county or municipality to enact excess levies as authorized under existing statutory or constitutional provisions.

Notice of the public hearing and the meeting in which the levy rate shall be on the agenda shall be given at least seven days before the date for each public hearing by the publication of a notice in at least one newspaper of general circulation in such county or municipality: Provided, That a Class IV town or village as defined in section two, article one, chapter eight of this code, in lieu of the publication notice required by this subsection, may post no less than four notices of each public hearing, which posted notices shall contain the information required by the publication notice and which shall be in available, visible locations including the town hall. The notice shall be at least the size of one-eighth page of a standard size newspaper or one-fourth page of a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than twenty-four point. The publication notice shall be placed outside that portion, if any, of the newspaper reserved for legal notices and classified advertisements and shall also be published as a Class II-O legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county. The notice shall be in the following form and contain the following information, in addition to such other information as the local governing body may elect to include:
NOTICE OF PROPOSED TAX INCREASE

The (name of the county or municipality) proposes to increase property tax levies.

1. Appraisal/Assessment Increase: Total assessed value of property, excluding additional assessments due to new or improved property, exceeds last year’s total assessed value of property by ___ percent.

2. Lowered Rate Necessary to Offset Increased Assessment: The tax rate which would levy the same amount of property tax as last year, when multiplied by the new total assessed value of property with the exclusions mentioned above, would be $___ per $100 of assessed value for Class I property, $___ per $100 of assessed value for Class II property, $___ per $100 of assessed value for Class III and $___ per $100 of assessed value for Class IV property. These rates will be known as the “lowered tax rates.”

3. Effective Rate Increase: The (name of the county or municipality) proposes to adopt a tax rate of $___ per $100 of assessed value for Class I property, $___ per $100 of assessed value for Class II property, $___ per $100 of assessed value for Class III property and $___ per $100 of assessed value for Class IV property. The difference between the lowered tax rates and the proposed rates would be $___ per $100, or ___ percent for Class I; $___ per $100, or ___ percent for Class II; $___ per $100, or ___ percent for Class III; and $___ per $100, or ___ percent for Class IV. These differences will be known as the “effective tax rate increases.”

Individual property taxes may, however, increase at a percentage greater than or less than the above percentage.

4. Revenue produced last year: $___

5. Revenue projected under the effective rate increases: $___

6. Revenue projected from new property or improvements: $___
TAXATION

7. General areas in which new revenue is to be allocated: _____________________________.

A public hearing on the increases will be held on (date and time) at (meeting place). A decision regarding the rate increase will be made on (date and time) at (meeting place).

(d) All hearings are open to the public. The governing body shall permit persons desiring to be heard an opportunity to present oral testimony within such reasonable time limits as are determined by the governing body.

(e) This section shall be effective as to any regular levy rate imposed by the county commission or a municipality for taxes due and payable on or after the first day of July, one thousand nine hundred ninety-one. If any provision of this section is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.

§11-8-6f. Effect on school board levy rate when appraisal results in tax increase.

(a) Notwithstanding any other provision of law, where any annual appraisal, triennial appraisal or general valuation of property would produce a statewide aggregate assessment that would cause an increase of one percent or more in the total property tax revenues that would be realized were the then current levy rates of the county boards of education to be imposed, the rate of levy for county boards of education shall be reduced uniformly statewide and proportionately for all classes of property for the forthcoming tax year so as to cause such rate of levy to produce no more than one hundred one percent of the previous year’s projected statewide aggregate property tax revenues from extending the county board of education levy rate, unless subsection (b) of this section is complied with. The reduced rates of levy shall be calculated in the following manner: (1) The total assessed value of each class of property as it is
defined by section five, article eight of this chapter for
the assessment period just concluded shall be reduced
by deducting the total assessed value of newly created
properties not assessed in the previous year’s tax book
for each class of property; (2) the resulting net assessed
value of Class I property shall be multiplied by .01; the
value of Class II by .02; and the values of Class III and
IV, each by .04; (3) Total the current year’s property tax
revenue resulting from regular levies for the boards of
education throughout this state and multiply the
resulting sum by one hundred one percent: Provided,
That the one hundred one percent figure shall be
increased by the amount the boards of educations’
increased levy provided for in subsection (b), section
eight, article one-c of this chapter; (4) Divide the total
regular levy tax revenues, thus increased in subdivision
(3), above, by the total weighted net assessed value as
calculated in paragraph two of this section and multiply
the resulting product by one hundred; the resulting
number is the Class I regular levy rate, stated as cents-
per-one hundred dollars of assessed value; and (5) The
Class II rate is two times the Class I rate; Classes III
and IV, four times the Class I rate as calculated in the
preceding subdivision. An additional appraisal or
valuation due to new construction or improvements,
including beginning recovery of natural resources, to
existing real property or newly acquired personal
property shall not be an annual appraisal or general
valuation within the meaning of this section, nor shall
the assessed value of such improvements be included in
calculating the new tax levy for purposes of this section.
Special levies shall not be included in any calculations
under this section, but shall be continued for the
remainder of the established period on the basis of the
property values and levy rates in effect on the effective
date of this bill.

(b) After conducting a public hearing, the Legislature
may, by act, increase the rate above the reduced rate
required in subsection (a) of this section if any such
increase is deemed to be necessary.

(c) This section shall be effective as to any regular
levy rate imposed for the county boards of education for taxes due and payable on or after the first day of July, one thousand nine hundred ninety-one. If any provision of this section is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.

CHAPTER 18. EDUCATION.


(a) For the fiscal year beginning on the first day of July, one thousand nine hundred ninety, the total assessed taxable value required for each class of property in each county shall not exceed the value so required by the tax commissioner for the fiscal year beginning on the first day of July, one thousand nine hundred eighty-nine. Thereafter, on the basis of the most recent property valuations in the state as to all classes of property in all counties as determined and published by the tax commissioner in reliance upon the appraised values annually developed by each county assessor pursuant to the provisions of article one-c and article three, chapter eleven of this code, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which such levies would produce if levied upon one hundred percent of the appraised value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows:

(1) The state board shall first take ninety-seven and one-half percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county.

(2) The state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the tax commissioner and shall deduct therefrom five percent
as an allowance for the usual losses in collections due
to discounts, exonerations, delinquencies and the like.
All of the amount so determined shall be added to the
ninety-seven and one-half percent of public utility taxes
computed as provided above and this total shall be the
local share of the particular county.

(b) Whenever in any year a county assessor or a
county commission shall fail or refuse to comply with
the provisions of this section in setting the valuations of
property for assessment purposes in any class or classes
of property in the county, the state tax commissioner
shall review the valuations for assessment purposes
made by the county assessor and the county commission
and shall direct the county assessor and the county
commission to make such corrections in the valuations
as may be necessary so that they shall comply with the
requirements of chapter eleven of this code and this
section, and the tax commissioner shall enter the county
and fix the assessments at the required ratios. Refusal
of the assessor or the county commission to make such
corrections shall constitute ground for removal from
office.

CHAPTER 173
(H. B. 4475—By Delegate Murensky)

[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three,
chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to exempting from taxation property used by nonprofit
corporations providing natural gas for public purposes.

Be it enacted by the Legislature of West Virginia:

That section nine, article three, 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 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

1 All property, real and personal, described in this section, and to the extent herein limited, shall be exempt from taxation, that is to say: Property belonging to the United States, other than property permitted by the United States to be taxed under state law; property belonging exclusively to the state; property belonging exclusively to any county, district, city, village or town in this state, and used for public purposes; property located in this state, belonging to any city, town, village, county or any other political subdivision of another state, and used for public purposes; property used exclusively for divine worship; parsonages, and the household goods and furniture pertaining thereto; mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon; cemeteries; property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture; property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university; public and family libraries; property used for charitable purposes, and not held or leased out for profit; property used for the public purposes of distributing water or natural gas, or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit; property used for area economic development purposes by nonprofit corporations when such property is not leased out for profit; all real estate...
not exceeding one-half acre in extent, and the buildings
thereon, and used exclusively by any college or univer-
sity society as a literary hall, or as a dormitory or
clubroom, if not leased or otherwise used with a view
to profit; all property belonging to benevolent associa-
tions, not conducted for private profit; property belong-
ing to any public institution for the education of the
deaf, dumb or blind, or any hospital not held or leased
out for profit; house of refuge, lunatic or orphan asylum;
homes for children or for the aged, friendless or infirm,
not conducted for private profit; fire engines and
implements for extinguishing fires, and property used
exclusively for the safekeeping thereof, and for the
meeting of fire companies; all property on hand to be
used in the subsistence of livestock on hand at the
commencement of the assessment year; household goods
to the value of two hundred dollars, whether or not held
or used for profit; bank deposits and money; household
goods (which term is deemed for purposes of this section
to mean only personal property and household goods
commonly found within the house and items used to care
for the house and its surrounding property) when not
held or used for profit, and personal effects (which term
is deemed for purposes of this section to mean only
articles and items of personal property commonly worn
on or about the human body, or carried by a person and
normally thought to be associated with the person) when
not held or used for profit; dead victuals laid away for
family use and any other property or security exempted
by any other provision of law; but no property shall be
exempt from taxation which shall have been purchased
or procured for the purpose of evading taxation,
whether temporarily holding the same over the first day
of the assessment year or otherwise: Provided, That real
property which is exempt from taxation by this section
shall be entered upon the assessor's books, together with
the true and actual value thereof, but no taxes shall be
levied upon the same or extended upon the assessor's
books.

Notwithstanding any other provisions of this section,
however, no language herein shall be construed to
exempt from taxation any property owned by, or held
in trust for, educational, literary, scientific, religious or other charitable corporations or organizations, including any public or private nonprofit foundation or corporation existing for the support of any college or university located in West Virginia, unless such property, or the dividends, interest, rents or royalties derived therefrom, is used primarily and immediately for the purposes of such corporations or organizations.

The tax commissioner shall, by issuance of regulations, provide each assessor with guidelines to ensure uniform assessment practices statewide to effect the intent of this section.

CHAPTER 174
(Com. Sub. for H. B. 4005—By Delegates Louderback and Jones)

[Passed March 8, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article one, chapter eleven-a of said code, relating to providing that ad valorem taxes on real or personal property will be considered as being timely filed and paid when delivered to the sheriff by the same methods prescribed for timely filing and payment with the state tax commissioner or state tax department.

Be it enacted by the Legislature of West Virginia:

That section three, 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 three, article one, chapter eleven-a of said code be amended and reenacted to read as follows:

Chapter
11. Taxation.
11A. Collection and Enforcement of Property Taxes.
CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

1 (a) The provisions of this article shall apply to the inheritance and transfer taxes, the estate tax, and interstate compromise and arbitration of inheritance and death taxes, the business franchise registration certificate tax, the annual tax on incomes of certain carriers, the business and occupation tax, the consumers sales and service tax, the use tax, the cigarette tax, the soft drinks tax, the personal income tax, the corporation net income tax, the gasoline and special fuel excise tax, the motor carrier road tax and the tax relief for elderly homeowners and renters administered by the state tax commissioner. This article shall not apply to ad valorem taxes on real and personal property, the corporate license tax or any other tax not listed hereinabove, except that in the case of ad valorem taxes on real and personal property, when any return, claim, statement or other document is required to be filed, or any payment is required to be made within a prescribed period or before a prescribed date, and the applicable law requires delivery to the office of the sheriff of a county of this state, the methods prescribed in section five-f of this article for timely filing and payment to the tax commissioner or state tax department shall be the same methods utilized for timely filing and payment with such sheriff.

(b) The provision of this article shall also apply to any other article of this chapter when such application is expressly provided for by the Legislature.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-3. Accrual; time for payment; interest on delinquent taxes.

1 (a) All current taxes assessed on real and personal property may be paid in two installments. The first
installment shall be payable on September first of the year for which the assessment is made, and shall become delinquent on October first; the second installment shall be payable on the first day of the following March and shall become delinquent on April first. Taxes paid on or before the date when they are payable, including both first and second installments, shall be subject to a discount of two and one-half percent. If taxes are not paid on or before the date on which they become delinquent, including both first and second installments, interest at the rate of nine percent per annum shall be added from the date they become delinquent until paid.

(b) With regard to real and personal property taxes, when any return, claim, statement or other document is required to be filed, or any payment is required to be made within a prescribed period or before a prescribed date, and the applicable law requires delivery to the office of the sheriff of a county of this state, the methods prescribed in section five-f, article ten, chapter eleven of this code for timely filing and payment to the tax commissioner or department of tax and revenue shall be the same methods utilized for timely filing and payment with such sheriff. Nothing contained in this subsection (b) shall prohibit the sheriff from establishing additional methods of payment in accordance with the provisions of section eight-a of this article.

CHAPTER 175

(Com. Sub. for H. B. 4247—By Delegates Pitrolo and Prezioso)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]
designated section seventy-one-a, relating generally to taxation; repealing the authority of the tax commissioner to use staff attorneys rather than the office of attorney general; exempting governmental units of other states from payment of the sales tax; providing that charitable or nonprofit organizations are able to claim an exemption from the state sales tax for sales or donations of food made to persons in need thereof; exempting from consumers sales tax charges for opening and closing burial lots; exempting sales of livestock, poultry or other farm products from consumers sales tax under certain circumstances; exempting from consumers sales tax sales of motion pictures and video arcade games under certain circumstances; exempting sales of certain services and tangible personal property relating to aircraft under certain circumstances; providing that lump sum distributions be added to the taxable income of resident estates or trusts; requiring pass through entities to deduct and withhold tax from distributions, whether actual or deemed distributions for federal income tax purposes, of West Virginia source income to nonresident partners, nonresident shareholders in S corporations, and nonresident beneficiaries of trusts; including corporations subject to corporation net income tax; providing administrative procedures for payment and collection of tax including liability for withheld tax; and providing for administrative procedures and effective dates.

Be it enacted by the Legislature of West Virginia:

That section ten-a, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, nine and thirty-three, article fifteen of said chapter be amended and reenacted; that section eighteen, article twenty-one of said chapter be amended and reenacted; and that said article twenty-one be further amended by adding thereto a new section, designated section seventy-one-a, all to read as follows:

Article
15. Consumers Sales Tax.
ARTICLE 15. CONSUMERS SALES TAX.

§11-15-33. Effective date.


1 For the purpose of this article:
2 (a) "Persons" means any individual, partnership,
3 association, corporation, state or its political subdivi-
4 sions or agency of either, guardian, trustee, committee,
5 executor or administrator.
6 (b) "Tax commissioner" means the state tax
7 commissioner.
8 (c) "Gross proceeds" means the amount received in
9 money, credits, property or other consideration from
10 sales and services within this state, without deduction
11 on account of the cost of property sold, amounts paid for
12 interest or discounts or other expenses whatsoever.
13 Losses shall not be deducted, but any credit or refund
14 made for goods returned may be deducted.
15 (d) "Sale," "sales" or "selling" includes any transfer of
16 the possession or ownership of tangible personal
17 property for a consideration, including a lease or rental,
18 when the transfer or delivery is made in the ordinary
19 course of the transferor's business and is made to the
20 transferee or his agent for consumption or use or any
21 other purpose.
22 (e) "Vendor" means any person engaged in this state
23 in furnishing services taxed by this article or making
24 sales of tangible personal property.
25 (f) "Ultimate consumer" or "consumer" means a
26 person who uses or consumes services or personal
27 property.
28 (g) "Business" includes all activities engaged in or
29 caused to be engaged in with the object of gain or
30 economic benefit, direct or indirect, and all activities of
31 the state and its political subdivisions which involve
32 sales of tangible personal property or the rendering of
33 services when those service activities compete with or
34 may compete with the activities of other persons.
(h) "Tax" includes all taxes, interest and penalties levied hereunder.

(i) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include contracting, personal services or the services rendered by an employee to his employer or any service rendered for resale.

(j) "Purchaser" means a person who purchases tangible personal property or a service taxed by this article.

(k) "Personal service" includes those:

(1) Compensated by the payment of wages in the ordinary course of employment;

(2) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

(l) "Taxpayer" means any person liable for the tax imposed by this article.

(m) "Drugs" includes all sales of drugs or appliances to a purchaser, upon prescription of a physician or dentist and any other professional person licensed to prescribe.

(n) (1) "Directly used or consumed" in the activities of manufacturing, transportation, transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to such activities.

(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources includes only:
(A) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;

(B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(C) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(D) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(E) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(F) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(G) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(H) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(I) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(J) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources, or for property directly used in transportation, communication, transmission,
manufacturing production or production of natural resources;

(K) Maintenance or repair of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(L) Storage, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;

(M) Pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(N) Otherwise be used as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.

(3) Uses of property or services which would not constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources includes, but are not limited to:

(A) Heating and illumination of office buildings;

(B) Janitorial or general cleaning activities;

(C) Personal comfort of personnel;

(D) Production planning, scheduling of work, or inventory control;

(E) Marketing, general management, supervision, finance, training, accounting and administration; or

(F) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of such activities.
"Contracting."

(1) In general.—"Contracting" means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor or subcontractor) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.

(2) Form of contract not controlling.—An activity that falls within the scope of the definition of contracting shall constitute contracting regardless of whether such contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract (whether or not open-ended), or any other kind of construction contract.

(3) Special rules.—For purposes of this definition:

(A) The term "structure" includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property, or which adds utility to real property or any part thereof, or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time.

(B) The term "alteration" means and is limited to alterations which are capital improvements to a building or structure or to real property.

(C) The term "repair" means and is limited to repairs which are capital improvements to a building or structure or to real property.

(D) The term "decoration" means and is limited to decorations which are capital improvements to a building or structure or to real property.

(E) The term "improvement" means and is limited to
185 improvements which are capital improvements to a building or structure or to real property.
186
(F) The term "capital improvement" means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property or any part thereof and that last, or are intended to be relatively permanent. As used herein, "relatively permanent" means lasting at least a year or longer in duration without the necessity for regularly scheduled recurring service to maintain such capital improvement. "Regular recurring service" means regularly scheduled service intervals of less than one year.

(G) Contracting does not include the furnishing of work, or both materials and work in the nature of hookup, connection, installation or other services if such service is incidental to the retail sale of tangible personal property from the service provider's inventory: Provided, That such hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant hereto include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup, and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if such repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or is intended to allow such real property or thing permanently attached thereto to remain in service for a year or longer.

(p) "Manufacturing" means a systematic operation or
integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(q) "Transportation" means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

(r) "Transmission" means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

(s) "Communication" means all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and shall include commercial broadcast radio, commercial broadcast television and cable television.

(t) "Production of natural resources" means the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith.


1 The following sales and services are exempt:

2 (a) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

3 (b) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia department of education
and the arts; board of trustees of the university system of West Virginia, or the board of directors for colleges located in this state;

(c) Sales of property or services to the state, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: Provided, That the law of such other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(d) Sales of vehicles which are titled by the division of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of this code, or like tax;

(e) Sales of property or services to churches and bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption herein granted shall apply only to services, equipment, supplies, food for meals and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;

(f) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under article twelve of this chapter is exempt from federal income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended, and is:

(1) A church or a convention or association of churches as defined in section 170 of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended;

(2) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;
(3) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions, or membership fees;

(4) An organization which has no paid employees and its gross income from fund raisers, less reasonable and necessary expenses incurred to raise such gross income (or the tangible personal property or services purchased with such net income), is donated to an organization which is exempt from income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended; or

(5) A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America, or the YMCA Indian Guide/Princess Program, and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members.

(6) For purposes of this subsection:

(A) The term “support” includes, but is not limited to:

(i) Gifts, grants, contributions or membership fees;

(ii) Gross receipts from fund raisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of section 513 of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended;

(iii) Net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business;

(iv) Gross investment income as defined in section 509(e) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended;

(v) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of such organization; and
(vi) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in section 170(c)(1) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of an exemption from any federal, state or local tax or any similar benefit;

(B) The term "charitable contribution" means a contribution or gift to or for the use of a corporation or organization, described in section 170(c)(2) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended;

(C) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(7) The exemption allowed by this subsection (f) does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in section 513 of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended. The provisions of this subsection as amended by this act shall apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine: Provided, That the exemption herein granted shall apply only to services, machinery,
supplies and materials directly used or consumed in the businesses or organizations named above, and shall not apply to purchases of gasoline or special fuel: Provided, however, That on and after the first day of July, one thousand nine hundred eighty-seven, the exemption provided in this subsection shall apply only to services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication or the production of natural resources in the businesses or organizations named above and shall not apply to purchases of gasoline or special fuel;

(h) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner thereof or by his representative for the owner’s account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative: Provided, That nothing contained herein may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided herein, regardless where such isolated sale takes place. The tax commissioner may adopt such legislative rule pursuant to chapter twenty-nine-a of this code as he deems necessary for the efficient administration of this exemption;

(i) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article or which would have been subject to tax under this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel shall not be exempt;

(j) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal
Ch. 175] TAXATION 1405

166 property: Provided, That sales of gasoline and special fuel by distributors and importers shall be taxable except when the sale is to another distributor for resale: Provided, however, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by such person or his agent into any real property, building or structure shall not be exempt under this subsection, except that sales of tangible personal property to a person engaging in the activity of contracting pursuant to a written contract with the United States, this state, or with a political subdivision thereof, or with a public corporation created by the Legislature or by another government entity pursuant to an act of the Legislature, for a building or structure, or improvement thereto, or other improvement to real property that is or will be owned and used by the governmental entity for a governmental or proprietary purpose, who incorporates such property in such building, structure or improvement shall, with respect to such tangible personal property, nevertheless be deemed to be the vendor of such property to the governmental entity and any person seeking to qualify for and assert this exception must do so pursuant to such legislative rules and regulations as the tax commissioner may promulgate and upon such forms as the tax commissioner may prescribe. A subcontractor who, pursuant to a written subcontract with a prime contractor who qualifies for this exception, provides equipment, or materials, and labor to such a prime contractor shall be treated in the same manner as the prime contractor is treated with respect to the prime contract under this exception and the legislative rules and regulations promulgated by the tax commissioner;

(k) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel shall be taxable;

(l) Sales and services, fire fighting or station house
equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia: *Provided*, That sales of gasoline and special fuel shall be taxable;

(m) Sales of newspapers when delivered to consumers by route carriers;

(n) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(o) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

(p) Sales and services performed by day-care centers;

(q) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subsection (f) of this section on its purchases of tangible personal property or services:

(1) For purposes of this subsection, the term “casual and occasional sales not conducted in repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fund raisers sponsored by a corporation or organization which is exempt, under subsection (f) of this section, from payment of the tax imposed by this article on its purchases, when such fund raisers are of limited duration and are held no more than six times during any twelve-month period and limited duration means no more than eighty-four consecutive hours;

(2) The provisions of this subsection (q), as amended by this act, shall apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine;

(r) Sales of property or services to a school which has approval from the board of trustees of the university system of West Virginia or the board of directors of the
state college system to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes under section 501(c)(3) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended: Provided, That sales of gasoline and special fuel shall be taxable;

(s) Sales of mobile homes to be utilized by purchasers as their principal year-round residence and dwelling: Provided, That these mobile homes shall be subject to tax at the three-percent rate;

(t) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

(u) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. This exemption shall apply to leases executed on or after the first day of July, one thousand nine hundred eighty-seven, and to payments under long-term leases executed before such date, for months thereof beginning on or after such date;

(v) Notwithstanding the provisions of subsection (g) of this section or any provisions of this article to the contrary, sales of property and services to persons subject to tax under article thirteen, thirteen-a or thirteen-b of this chapter: Provided, That the exemption herein granted shall apply both to property or services directly or not directly used or consumed in the conduct of privileges which are subject to tax under such articles but shall not apply to purchases of gasoline or special fuel;

(w) Sales of propane to consumers for poultry house heating purposes, with any seller to such consumer who may have prior paid such tax in his price, to not pass on the same to the consumer, but to make application and receive refund of such tax from the tax commissioner, pursuant to rules and regulations which shall be promulgated by the tax commissioner; and notwithstanding the provisions of section eighteen of this article or any other provisions of such article to the contrary;
(x) Any sales of tangible personal property or services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 United States Code, §2011, et seq., as amended, or with drafts issued through the West Virginia special supplemental food program for women, infants and children codified in 42 United States Code, §1786;

(y) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

(z) Sales of electronic data processing services and related software: Provided, That for the purposes of this subsection (z) "electronic data processing services" means (1) the processing of another's data, including all processes incident to processing of data such as key-punching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and (2) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment;

(aa) Tuition charged for attending educational summer camps;

(bb) Sales of building materials or building supplies or other property to an organization qualified under section 501 (c)(3) or (c)(4) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended, which are to be installed in, affixed to or incorporated by such organization or its agent into real property, or into a building or structure which is or will be used as permanent low-income housing, transitional housing, emergency homeless shelter, domestic violence shelter or emergency children and youth shelter if such shelter is owned, managed, developed or operated by an organization qualified under section 501(c)(3) or (c)(4) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended;
(cc) Dispensing of services performed by one corporation for another corporation when both corporations are members of the same controlled group. Control 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 a corporation entitled to vote or ownership, directly or indirectly, of stock possessing fifty percent or more of the value of the corporation;

(dd) Food for the following shall be exempt:

(1) Food purchased or sold by public or private schools, school sponsored student organizations, or school sponsored parent-teacher associations to students enrolled in such school or to employees of such school during normal school hours; but not those sales of food made to the general public;

(2) Food purchased or sold by a public or private college or university or by a student organization officially recognized by such college or university to students enrolled at such college or university when such sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(3) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;

(4) Food sold in an occasional sale by a charitable or nonprofit organization including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue so obtained is actually expended for that purpose;

(5) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue
for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying on such functions and activities: Provided, That purchases made by such organizations shall not be exempt as a purchase for resale;

(ee) Sales of food by little leagues, midget football leagues, youth football or soccer leagues and similar types of organizations including scouting groups and church youth groups if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: Provided, That such purchases made by such organizations shall not be exempt as a purchase for resale;

(ff) Charges for room and meals by fraternities and sororities to their members: Provided, That such purchases made by a fraternity or sorority shall not be exempt as a purchase for resale;

(gg) Sales of or charges for the transportation of passengers in interstate commerce;

(hh) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the constitution of this state;

(ii) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provisions of any other chapter of this code;

(jj) Charges for the services of opening and closing a burial lot;

(kk) Sales of livestock, poultry or other farm products in their original state by the producer thereof (or a member of the producer's immediate family) who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeder's or registry associations or livestock auction markets: Provided, That the exemp-
tions allowed by this subsection shall apply to sales
made on or after the first day of July, one thousand nine
hundred ninety, and may be claimed without presenting
or obtaining exemption certificates: Provided, however,
That the farmer shall maintain adequate records;

(II) Sales of motion picture films to motion picture
exhibitors for exhibition if the sale of tickets or the
charge for admission to the exhibition of the film is
subject to the tax imposed by this article and sales of
coin operated video arcade machines, or video arcade
games, to a person engaged in the business of providing
such machines to the public for a charge upon which the
tax imposed by this article is remitted to the tax
commissioner: Provided, That the exemption provided in
this subsection shall apply to sales made on or after the
first day of July, one thousand nine hundred ninety, and
may be claimed by presenting to the seller a properly
executed exemption certificate; and

(mm) Sales of aircraft repair, remodeling and main-
tenance services when such services are to an aircraft
operated by a certificated or licensed carrier of persons
or property, or by a governmental entity, or to an engine
or other component part of an aircraft operated by a
certificated or licensed carrier of persons or property,
or by a governmental entity, and sales of tangible
personal property that is permanently affixed or
permanently attached as a component part of an aircraft
owned or operated by a certificated or licensed carrier
of persons or property, or by a governmental entity, as
part of the repair, remodeling or maintenance service
and sales of machinery, tools, or equipment, directly
used or consumed exclusively in the repair, remodeling,
or maintenance of aircraft, aircraft engines, or aircraft
component parts, for a certificated or licensed carrier
of persons or property, or for a governmental entity.

§11-15-33. Effective date.

(a) The provisions of this article as amended or added
by Senate Bill No. 1 took effect on the first day of
March, one thousand nine hundred eighty-nine, and
apply to all sales made on or after that date: Provided,
That if an effective date was expressly provided in a provision of such act, that specific effective date controlled in lieu of this general effective date provision.

(b) The provisions of this article as amended or added by chapter two hundred one, Acts of the Legislature, one thousand nine hundred eighty-nine, took effect on the first day of July, one thousand nine hundred eighty-nine, and apply to all sales made on or after that date: Provided, That if an effective date is expressly provided in any provision, that specific effective date shall control in lieu of this general effective date provision.

(c) The provisions of this article as amended or added by Committee Substitute for House Bill No. 4247 shall take effect on the first day of July, one thousand nine hundred ninety, and apply to all sales made on or after that date: Provided, That if an effective date is expressly provided in any provision of such act, that specific effective date shall control in lieu of this general effective date provision with respect to such provision.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-18. West Virginia taxable income of resident estate or trust.

§11-21-71a. Withholding tax on effectively connected income of nonresident partners, shareholders or beneficiaries.

§11-21-18. West Virginia taxable income of resident estate or trust.

The West Virginia taxable income of a resident estate or trust means its federal taxable income as defined in the laws of the United States for the taxable year, with the following modifications:

(1) There shall be subtracted six hundred dollars as the West Virginia exemption of the estate or trust, and there shall be added the amount of its federal deduction for a personal exemption.

(2) There shall be subtracted the modification described in subdivision (3), subsection (c), section twelve of this article, with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from distributable net income of the estate or trust for federal income tax purposes.
(3) There shall be added or subtracted (as the case may be) the share of the estate or trust in the West Virginia fiduciary adjustment determined under section nineteen.

(4) There shall be added to federal adjusted gross income, unless already included therein, the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended, to be separately taxed for federal income tax purposes: Provided, That the provisions of this subdivision shall be effective for taxable year beginning after the thirty-first day of December, one thousand nine hundred ninety.

§11-21-71a. Withholding tax on effectively connected income of nonresident partners, shareholders or beneficiaries.

(a) General Rule.—For the privilege of doing business in this state or deriving rents or royalties from realty property located in this state, including natural resources in place and standing timber, a partnership, S corporation, or trust, treated as a pass through entity for federal income tax purposes, which has effectively connected taxable income for the taxable year any portion of which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary, as the case may be, shall pay a withholding tax under this section.

(b) Amount of withholding tax.

(1) In general.—The amount of the withholding tax payable by any partnership, S corporation, or trust, under subsection (a) shall be equal to the applicable percentage of the effectively connected taxable income of the partnership, S corporation, or trust, as the case may be, which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust.

(2) Applicable percentage.—For purposes of subdivision (1), the term "applicable percentage" means:
(A) Four percent in the case of the portion of the
effectively connected taxable income which is allocable
to nonresident persons who are not corporations, and

(B) Nine percent in the case of the portion of effect-
tively connected taxable income which is allocable to
nonresident persons who are corporations taxable under
article twenty-four of this chapter.

(c) Payment of withheld tax.—Each partnership, S
corporation, or trust, required to withhold tax under
this section shall pay the amount required to be
withheld to the tax commissioner no later than:

(1) S corporations.—The fifteenth day of the third
month following the close of the taxable year of the S
corporation with the annual information return due
under article twenty-four of this chapter unless para-
graph (3) applies.

(2) Partnerships and trusts.—The fifteenth day of the
fourth month following the close of the taxable year of
the partnership or trust, with the annual return of the
partnership or trust due under this article, unless
paragraph (3) applies.

(3) Composite returns.—The fifteenth day of the
fourth month of the taxable year with the composite
return filed under section fifty-one-a of this article.

(d) Effectively connected taxable income.—For pur-
poses of this section, the term “effectively connected
taxable income” means the federal taxable income or
portion thereof of a partnership, S corporation, or trust,
as the case may be, which is derived from or attribu-
table to West Virginia sources as determined under
section thirty-two of this article and such regulations as
the tax commissioner may prescribe, whether such
amount is actually distributed or is deemed to have been
distributed for federal income tax purposes.

(e) Treatment of nonresident partners, S corporation
shareholders or beneficiaries of a trust.

(1) Allowance of credit.—Each nonresident partner,
nonresident shareholder, or nonresident beneficiary
shall be allowed a credit for such partner's or shareholder's or beneficiary's share of the tax withheld by the partnership, S corporation, or trust, under this section:

Provided, That when the distribution is to a corporation taxable under article twenty-four of this chapter, the credit allowed by this section shall be applied against the corporation's liability for tax under article twenty-four of this chapter.

(2) Credit treated as distributed to partner, shareholder or beneficiary.—Except as provided in regulations, a nonresident partner's share, a nonresident shareholder's share, or a nonresident beneficiary's share, of any withholding tax paid by the partnership, S corporation, or trust, under this section shall be treated as distributed to such partner by such partnership, or to such shareholder by such S corporation, or to such beneficiary by such trust, on the earlier of:

(A) The day on which such tax was paid by the partnership, S corporation, or trust; or

(B) The last day of the taxable year for which such tax was paid by partnership, S corporation or trust.

(f) Regulations.—The tax commissioner shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(g) Information statement.—Every person required to deduct and withhold tax under this section shall furnish to each nonresident partner, or nonresident shareholder, or nonresident beneficiary, as the case may be, on or before the fifteenth day of February of the succeeding taxable year of the partner, shareholder, or beneficiary, a written statement as prescribed by the tax commissioner showing the amount of distributions by such partnership, S corporation, or trust to such nonresident partner, or nonresident shareholder, or nonresident beneficiary for federal income tax purposes; the amount deducted and withheld as tax under this section; and such other information as the tax commissioner may require.

(h) Liability for withheld tax.—Every person required
to deduct and withhold tax under this section is hereby
made liable for the payment of such tax. The amount
of tax required to be withheld and paid over to the tax
commissioner shall be considered the tax of the partner-
ship, S corporation, or trust, as the case may be, for
purposes of articles nine and ten of this chapter. Any
amount of tax withheld under this section shall be held
in trust for the tax commissioner. No partner, S
corporation shareholder, or beneficiary of a trust, shall
have a right of action against the partnership, S
corporation, or trust, in respect to any moneys deducted
and withheld from such person's distributive share and
paid over to the tax commissioner in compliance with
or intended compliance with this section.

(i) Failure to withhold.—If any partnership, S corpo-
ration, or trust, fails to deduct and withhold tax as
required by this section, and thereafter the tax against
which such tax may be credited is paid, the tax so
required to be deducted and withheld under this section
shall not be collected from the partnership, S corpora-
tion, or trust, as the case may be, but the partnership,
S corporation, or trust, shall not be relieved from
liability for any penalties, interest, on additions to tax
otherwise applicable in respect of such failure to
withhold.

(j) Effective date.—The provisions of this section shall
apply to taxable years ending after the effective date of
this article.

CHAPTER 176
(Com. Sub. for S. B. 333—By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend article thirteen-c, chapter eleven of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new section,
designated section fourteen, relating generally to the
business investment and jobs expansion tax credits; narrowing, restricting and otherwise limiting the availability and benefits of such credits to taxpayers; making legislative findings; providing rule of construction; prohibiting application of credit against severance taxes, subject to transition rules; requiring persons who will claim credit under transition rules to timely file notice of intent with tax commissioner; limiting credit available to project successors under certain circumstances; defining or redefining certain terms; requiring timely filing of application for credit; providing for forfeiture of credit under specified circumstances; providing other administration provisions; and specifying internal effective dates.

Be it enacted by the Legislature of West Virginia:

That article thirteen-c, 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 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-14. Restrictions and limitations on credits allowed by this article.

1 (a) Findings.—The Legislature finds that the tax credits allowed under provisions of this article heretofore enacted have not effectively and efficiently increased employment through investment in certain industry segments; that while there has been a significant net decrease in employment in the coal industry in recent years the amount of credit being claimed by producers of coal has significantly increased; that the increasing cost of the credits allowed by this article to coal producers is eroding the state's ability to reasonably fund essential state services such as public education, public safety and basic human services; and that this erosion will continue unless remedial legislation is enacted.

15 (b) Construction.—The rule of statutory construction codified in subsection (b), section twelve of this article, is hereby replaced with a rule of reasonable construction
in which the burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

(c) Credit not to be applied against severance taxes.

(1) Notwithstanding any provision in this chapter to the contrary, no credit shall be allowed against the taxes imposed by article thirteen-a of this chapter for taxable years ending on or after the date of passage of this section unless one of the transition rules in paragraph (2) of this subsection (c) applies.

(2) Transition rules.—The general rule stated in paragraph (1) of this subsection (c) shall not apply:

(A) To qualified investment property placed in service or use prior to the date of passage of this section.

(B) To property purchased or leased for business expansion that is placed in service or use on or after the date of passage of this section, if at least one of the following clauses applies to such property:

(i) The new or expanded business facility was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the date of passage of this section, as limited to the provisions of such contract as of such date then binding on the taxpayer, but only to the extent such new or expanded business facility is placed in service or use prior to the first day of January, one thousand nine hundred ninety-two.

(ii) The new or expanded business facility which is part of a project described in paragraph (1), subsection (a), section four-b of this article, was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the date of passage of this section, as limited to the provisions of such contract as of such date then binding on the taxpayer: Provided, That only that portion of the contract price attributable to that percentage of the construction contract completed prior to the first day of January, one thousand nine hundred ninety-two (determined under principles...
set forth in Section 460(b) of the Internal Revenue Code of 1986, as in effect before the date of passage of this section) which is placed in service or use prior to the first day of January, one thousand nine hundred ninety-four, may be treated as property purchased for business expansion under section six of this article.

(iii) The new or expanded business facility was purchased or leased pursuant to a written contract executed prior to the date of passage of this section, as limited to the provisions then binding on the taxpayer as of such date, but only to the extent such new or expanded business facility is placed in service or use prior to the first day of January, one thousand nine hundred ninety-two.

(iv) The machinery or equipment or other tangible personal property purchased or leased for business expansion at a new or expanded business facility was purchased or leased by the taxpayer pursuant to a written contract to purchase or lease identifiable tangible personal property executed before the date of passage of this section, as limited to the provisions of such written contract then binding on the taxpayer, but only to the extent the tangible personal property purchased or leased under such contract is placed in service or use before the first day of January, one thousand nine hundred ninety-two: Provided, That when such tangible personal property is purchased or leased as aforesaid as part of a project described in clause (ii) of this subparagraph (B), such tangible personal property must be placed in service or use prior to the first day of January, one thousand nine hundred ninety-four, to be treated as property purchased or leased for business expansion under section six of this article.

(C) To property purchased or leased for business expansion that is placed in service or use on or after the date of passage of this section as part of a project otherwise eligible for the credit under subsection (a), section four-b of this article, if all of the requirements of clauses (i), (ii), (iii) and (iv) of this subparagraph are satisfied:
(i) The taxpayer and other participants in the project, if any, have made investments in property purchased or leased for business expansion as defined in subsection (b)(19), section three of this article prior to the date of passage of this section in excess of ten million dollars.

(ii) The investments described in clause (i) were made pursuant to a plan for an integrated project to be developed over a period of one or more years and with the expectation of making additional investments in the integrated project.

(iii) The portion of the project constructed, purchased or leased after the date of passage of this section meets the definition of new business facility in subsection (e)(3) of this section.

(iv) The new jobs created by the project after the date of passage of this section are filled by new employees as defined in subsection (e)(4) of this section.

(3) Notice of claim under transition rules.

(A) Notice required.—Any person intending to assert a claim for credit based in whole or in part on application of the transition rules in subparagraph (B) or (C), paragraph (2) of this subsection (c), shall file written notice of such intention with the tax commissioner on or before the first day of July, one thousand nine hundred ninety. In the case of a multiparticipant project, this notice may be filed by the managing project participant on behalf of all participants in such project. Such notice shall be in a form prescribed by the tax commissioner and all information required by such form shall be provided.

(B) Failure to file notice.—If any person fails to timely file the notice required by this paragraph (3), such person shall be precluded from claiming credit under this article for such investment.

(d) Treatment of successor project participants.—Whenever a participant in a project certified under paragraph (2) or (3), subsection (a), section four-b of this article, is replaced by another participant in that project on or after the date of passage of this section, the tax
credits available to such successor participant as a result of the transfer shall not exceed the amount of credits that would have been available to the predecessor participant had the transfer to the successor participant not occurred: Provided, That if the project plan provides for annual recalculation of the division of the credit allowable for each year among the participants in the project in order to maximize the collective use of such credit by the project participants, or for any other purpose, then the credit available to the successor participant as a result of the transfer shall be limited each year to the amount of credit actually used by the predecessor participant to offset taxes for the taxable year immediately preceding the taxable year in which such participant's obligations or interest in the project, as described in the project plan certified by the tax commissioner, passed to the successor participant in the project.

(c) Certain terms redefined.—Notwithstanding the provisions of subsection (b), section three of this article, or any other provision of this article, to the contrary, the following terms have the meanings assigned to them by this section.

(1) Construction contract.—The term “construction contract” means any contract for the building, construction, reconstruction or rehabilitation of, or the installation of any integral components to, or improvements of, a new or existing business facility.

(2) Excluded property.—The term “property purchased or leased for business expansion” shall not include:

(A) Property owned or leased by the taxpayer and for which the taxpayer was previously allowed tax credit for industrial expansion, tax credit for industrial revitalization, tax credit for coal loading facilities or the tax credits allowed by this article.

(B) Property owned or leased by the taxpayer and for which the seller, lessor, or other transferor, was previously allowed tax credit for industrial expansion, tax credit for industrial revitalization, tax credit for
176 coal loading facilities, or the tax credits allowed by this article.

178 (C) Repair costs, including materials used in the repair, unless for federal income tax purposes the cost of the repair must be capitalized and not expensed.

181 (D) Airplanes.

182 (E) Property which is primarily used outside this state, with use being determined based upon the amount of time the property is actually used both within and without this state.

186 (F) Property which is acquired incident to the purchase of the stock or assets of the seller, unless for good cause shown, the tax commissioner consents to waiving this requirement.

190 (G) Natural resources in place purchased or leased prior to the first day of March, one thousand nine hundred eighty-five, or purchased or leased after such date pursuant to an option to purchase or lease such natural resources in place acquired prior to such date but exercised in whole or in part on or after the date of passage of this section; and natural resources in place purchased or leased on or after the date of passage of this section unless pursuant to a written contract to purchase or lease executed prior to the passage of this section.

201 (H) Property purchased or leased on or after the date of passage of this section, unless pursuant to a written contract to purchase or lease executed prior to the passage of this section, the cost or consideration for which cannot be quantified with any reasonable 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 or minimum annual rent the amount thereof shall be used to determine the qualified investment in such property under section six of this article if the property otherwise qualifies as property purchased or leased for business expansion.

214 (3) New business facility.—The term "new business
facility” means a business facility which satisfies all the
requirements of subparagraphs (A), (B), (C) and (D) of
this paragraph.

(A) The facility is employed by the taxpayer in the
course of a business the net income of which is or
would be taxable under article twenty-one or twenty-
four of this chapter. Such facility shall not be considered
a new business facility in the hands of the taxpayer if
the taxpayer's only activity with respect to such facility
is to lease it to another person or persons.

(B) Such facility is purchased by, or leased to, the
taxpayer after the first day of March, one thousand nine
hundred eighty-five.

(C) The facility was not purchased or leased by the
taxpayer from a related person or a project participant,
or related person of a project participant, in any
certified project in which the taxpayer is a participant.
The tax commissioner may waive this requirement if the
facility was acquired from a related party for its fair
market value and the acquisition was not tax motivated.

(D) Such facility was not in service or use during the
ninety days immediately prior to transfer of the title to
such facility, or prior to the commencement of the term
of the lease of such facility: Provided, That this ninety
day period may be waived by the tax commissioner if
the commissioner determines that persons employed at
the facility may be treated as “new employees” as that
term is defined under paragraph (4) of this subsection.

(4) New Employee.—

(A) The term “new employee” means a person resid-
ing and domiciled in this state, hired by the taxpayer
to fill a position or a job in this state which previously
did not exist in taxpayer's business enterprise in this
state prior to the date on which the taxpayer’s qualified
investment is placed in service or use in this state. In
no case shall the number of new employees directly
attributable to such investment for purposes of this
credit exceed the total net increase in the taxpayer’s
employment in this state: Provided, That with respect
to taxpayers who file application for certification after
the date of passage of this section, the tax commissioner
may require that the net increase in the taxpayer's
employment in this state be determined and certified for
the taxpayer's controlled group; and in the case of a
project involving more than one person for the con-
trolled groups of all participants, taken as a whole:
Provided, however, That persons filling jobs saved as a
direct result of taxpayer's qualified investment in
property purchased or leased for business expansion on
or after the effective date of this section may be treated
as new employees filling new jobs if the taxpayer
certifies the material facts to the tax commissioner and
the tax commissioner expressly finds that:

(i) But for the new employer purchasing the assets of
a business in bankruptcy under chapter seven or eleven
of the United States Bankruptcy Code and such new
employer making qualified investment in property
purchased or leased for business expansion, the assets
would have been sold by the United States bankruptcy
court in a liquidation sale and the jobs so saved would
have been lost; or

(ii) But for taxpayer's qualified investment in prop-
erty purchased or leased for business expansion in this
state, taxpayer would have closed its business facility in
this state and the employees of the taxpayer located at
such facility would have lost their jobs: Provided, That
the tax commissioner shall not make this certification
unless the tax commissioner finds that the taxpayer is
insolvent as defined in 11 U.S.C. §101 (31) or that the
taxpayer's business facility was destroyed in whole or in
significant part by fire, flood or other act of God.

(B) A person shall be deemed to be a "new employee"
only if such person's duties in connection with the
operation of the business facility are on:

(i) A regular, full-time and permanent basis.

(I) "Full-time employment" means employment for at
least one hundred forty hours per month at a wage not
less than the prevailing state or federal minimum wage,
depending on which minimum wage provision is applicable to the business;

(II) "Permanent employment" does not include employment that is temporary or seasonal and therefore the wages, salaries and other compensation paid to such temporary or seasonal employees will not be considered for purposes of sections five and seven of this article; or

(ii) A regular, part-time and permanent basis: Provided, That such person is customarily performing such duties at least twenty hours per week for at least six months during the taxable year.

(5) Leased property.—The term "leased property" does not include property which the taxpayer is required to show on its books and records as an asset under generally accepted principles of financial accounting. If the taxpayer is prohibited from expensing the lease payments for federal income tax purposes, the property shall be treated as purchased property under this section if the property was purchased on or after the date of passage of this section.

(6) Small business.—The term "small business" means a small business which has an annual payroll of one million seven hundred thousand dollars or less, and annual gross receipts of not more than five million five hundred thousand dollars: Provided, That on or before the fifteenth of January, one thousand nine hundred ninety-one, and on or before each fifteenth day of January thereafter, the tax commissioner shall prescribe amounts which shall apply in lieu of the above amounts for taxable years beginning on or after the first day of January of the calendar year in which determination is made: Provided, however, That this determination shall not apply to small business projects which have received certification from the tax commissioner prior to the passage of this section if the said small business projects which have previously received certification continue to meet the requirements of a small business as in effect at the time of the certification of the project. Such prescribed amounts shall be determined in accordance with section seven-a of this
article and notice thereof shall be filed in the state register. For purposes of this definition:

(A) Annual Payroll.—The annual payroll of a business shall include the employees of its domestic and foreign affiliates, whether employed on a full-time, part-time, temporary, or other basis, during the preceding twelve months. If a business has not been in existence for twelve months, the payroll of the business shall be divided by the number of weeks, including fractions of a week, that it has been in business, and the result multiplied by fifty-two. That amount shall then be added to the twelve month payrolls of its domestic and foreign affiliates to determine the annual payroll of the business for purposes of this section.

(B) Annual gross receipts.—The annual gross receipts of a business shall include the annual gross receipts of its foreign and domestic affiliates.

(i) The “annual gross receipts” of a business which has been in business for three or more complete fiscal years means the annual gross revenues of the business for the last three fiscal years. For purposes of this definition, the gross revenues of the business includes revenues from sales of tangible personal property and services, interest, rents, royalties, fees, commissions and receipts from any other source, but less returns and allowances, sales of fixed assets, interaffiliated transactions between a business and its domestic and foreign affiliates, and taxes collected for remittance to a third party, as shown on its books for federal income tax purposes.

(ii) The annual receipts of a business that has been in business for less than three complete fiscal years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by fifty-two.

(C) Affiliates.—The term “affiliates” includes all concerns which are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other or (ii) a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and oper-
ated and whether or not affiliation exists, consideration
shall be given to all appropriate factors, including
common ownership, common management and contrac-
tual relationships.

(D) Concern.—The term “concern” means any busi-
ness entity organized for profit (even if its ownership is
in the hands of a nonprofit entity), having a place of
business located in this state, and which makes a
contribution to the economy of this state through
payment of taxes, or the sale or use in this state of
tangible personal property, or the procurement or
providing of services in this state, or the hiring of
employees who work in this state. “Concern” includes,
but is not limited to, any person as defined in paragraph
eighteen, subsection (b), section three of this article.

(f) Application for credit required.

(1) Application required.—Notwithstanding any pro-
vision of this article to the contrary, no credit shall be
allowed or applied under this article for any qualified
investment property placed in service or use on or after
the first day of January, one thousand nine hundred
ninety, until the person asserting a claim for the
allowance of credit under this article makes written
application to the tax commissioner for allowance of
credit as provided in this subsection and receives
written acknowledgement of its receipt from tax
commissioner: Provided, That in the case of a multipar-
ticipant project this notice may be filed by the managing
project participant on behalf of all participants in that
project. An application for credit shall be filed no later
than the last day of the due date, without extensions, for
filing the tax returns required under article twenty-one
or twenty-four of this chapter for the taxable year in
which the property to which the credit relates is placed
in service or use and all information required by such
form shall be provided.

(2) Failure to file.—The failure to timely apply for the
credit shall result in the forfeiture of fifty percent of the
annual credit allowance otherwise allowable under this
article. This penalty shall apply annually until such
application is filed.
(g) Regulations.—Within one hundred eighty days after the effective date of this section, the tax commissioner shall promulgate emergency regulations for this section, which shall also be filed as proposed legislative rules, in conformity with the provisions of article three, chapter twenty-nine-a of this code; and, if such regulations are timely filed, the Legislature shall act upon such proposed legislative regulations at its next regular session to begin in the year one thousand nine hundred ninety-one.

(h) Studies and reviews.—The tax commissioner shall review the accounts of all taxpayers who are currently claiming tax credits under this article for the purpose of ensuring that such credits are being claimed only in accordance with this article. The tax commissioner shall report his findings and conclusions based on such reviews at the next regular session of the Legislature along with recommendations for any further legislative change: Provided, That the confidentiality of all taxpayers and taxpayer information shall be preserved in such report and that this report shall in no way be deemed to affect future enforcement of this section.

(i) Effective date.

(1) Except as otherwise expressly provided in this section, the provisions of this section shall apply to property placed in service or use on or after the date of passage of this section by the Legislature, notwithstanding any provision of prior law which may be in conflict with this section. In the case of any such ambiguity, the provisions of this section shall control resolution of such ambiguity.

(2) The term “date of passage of this section” means the date on which this bill, as enacted, becomes an enrolled bill.

CHAPTER 177
(S. B. 545—By Senator Jones)

[Passed March 7, 1990; in effect ninety days from passage. Approved by the Governor.]

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 six new sections, designated sections eight-a, eight-b, eight-c, eight-d, eight-e and eight-f; and to amend article twenty-four of said chapter eleven by adding thereto six new sections, designated sections twenty-three-a, twenty-three-b, twenty-three-c, twenty-three-d, twenty-three-e and twenty-three-f, all relating to allowing a tax credit against the personal income tax liability of individuals and the corporate net income tax of businesses for investments in rehabilitated buildings.

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 six new sections, designated sections eight-a, eight-b, eight-c, eight-d, eight-e and eight-f; and that article twenty-four of said chapter be amended by adding thereto six new sections, designated sections twenty-three-a, twenty-three-b, twenty-three-c, twenty-three-d, twenty-three-e and twenty-three-f, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8a. Credit for qualified rehabilitated buildings investment.

§11-21-8b. Definitions.

§11-21-8c. Procedures.

§11-21-8d. Standards.

§11-21-8e. Fees.

§11-21-8f. Termination of credit by law.

§11-21-8a. Credit for qualified rehabilitated buildings investment.

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

3 Certified historic structures.—For certified historic structures, the credit is equal to ten percent of qualified rehabilitation expenditures. This credit is available for both residential and nonresidential buildings that are designated by the National Park Service, United States
department of the interior as “certified historic structures”, and further defined as a “qualified rehabilitated structure”, as defined under §48g, Title 26, of the United States Code, and the Tax Reform Act of 1986 (PL99-514) and amendments thereto.

§11-21-8b. Definitions.

(a) “Certified historic structure” means any building that is listed individually in the national register of historic places or located in a registered historic district and certified as being of historic significance to the district.

(b) “Certified rehabilitation” means any rehabilitation of a certified historic structure that is certified by the National Park Service and the Internal Revenue Service as being consistent with the historic character of the property and, where applicable, the district in which it is located.

(c) “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.

(d) “Historic preservation certification application” means the application forms published by the National Park Service, United States department of the interior, Parts 1, 2 and 3, form No. 10-168.

(e) “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.

(f) “State historic preservation officer” 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.
§11-21-8c. Procedures.

Application and processing procedures for provisions of this section shall be the same as any required under provisions of Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1. Successful completion of a historic preservation certification application automatically qualifies the applicant to be considered for tax credits under this section.

Successful certification by the National Park Service of a certified rehabilitation automatically qualifies the applicant for tax credits under this section. The state historic preservation officer's role in the application procedure shall be identical to that in Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1.

§11-21-8d. Standards.

All standards including the secretary of the interior standards and provisions in Title 36 of the Code of Federal Regulations, Part 67, and Title 26 of the Code of Federal Regulations, Part 1, that apply to tax credits available from the United States government apply to this section as well.

§11-21-8e. Fees.

The state tax department shall set fees as appropriate for applicants.

§11-21-8f. Termination of credit by law.

The tax credit allowed by this section shall be terminated on the thirty-first day of December, one thousand nine hundred ninety-two, unless review of the tax credit shall be undertaken pursuant to the provisions of sections nine, ten and eleven, article ten, chapter four of this code: Provided, That for those structures certified prior to that date, the credit shall continue to be allowed pursuant to this article.

ARTICLE 24. CORPORATE NET INCOME TAX.

§11-24-23a. Credit for qualified rehabilitated buildings investment.
§11-24-23b. Definitions.
§11-24-23a. Credit for qualified rehabilitated buildings investment.

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

Certified historic structures.—For certified historic structures, the credit is equal to ten percent of qualified rehabilitation expenditures. This credit is available for both residential and nonresidential buildings that are designated by the National Park Service, United States department of the interior as "certified historic structures", and further defined as a "qualified rehabilitated structure", as defined under §48g, Title 26, of the United States Code, and the Tax Reform Act of 1986 (PL99-514) and amendments.

§11-24-23b. Definitions.

(a) "Certified historic structure" means any building that is listed individually in the national register of historic places or located in a registered historic district and certified as being of historic significance to the district.

(b) "Certified rehabilitation" means any rehabilitation of a certified historic structure that is certified by the National Park Service and the Internal Revenue Service as being consistent with the historic character of the property and, where applicable, the district in which it is located.

(c) "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.

(d) "Historic preservation certification application"
means application forms published by the National Park
Service, United States department of the interior, Parts
1, 2 and 3, form No. 10-168.

(e) "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.

(f) "State historic preservation officer" 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.

§11-24-23c. Procedures.

Application and processing procedures for provisions
of this section shall be the same as any required under
provisions of Title 36 of the Code of Federal Regulations,
Part 67, and Title 26 of the Code of Federal Regulations,
Part 1. Successful completion of a historic preservation
certification application shall automatically qualify the
applicant to be considered for tax credits under this
section.

Successful certification by the National Park Service
of a certified rehabilitation shall automatically qualify
the applicant for tax credits under this section. The state
historic preservation officer's role in the application
procedure shall be identical to that in Title 36 of the
Code of Federal Regulations, Part 67, and Title 26 of

§11-24-23d. Standards.

All standards including the secretary of the interior
standards and provisions in Title 36 of the Code of
Federal Regulations, Part 67, and Title 26 of the Code
of Federal Regulations, Part 1, that apply to tax credits
available from the United States government shall
apply to this section as well.

§11-24-23e. Fees.

The state department of tax and revenue shall set fees
as appropriate for applicants.
§11-24-23f. Termination of credit by law.

1. The tax credit allowed by section twenty-three-a of this article shall be terminated on the thirty-first day of December, one thousand nine hundred ninety-two, unless review of the tax credit shall be undertaken pursuant to the provisions of sections nine, ten and eleven, article ten, chapter four of this code: Provided,

That for those structures certified prior to that date, the credit shall continue to be allowed pursuant to this article.

CHAPTER 178
(H. B. 4793—By Delegates Farley and Kiss)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and fifty-five, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to annual updating of meaning of certain terms used in personal income tax law to bring them into conformity with their meanings for federal income tax purpose for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-eight; and allowing the annual return of farmers to be treated as a declaration of estimated tax if filed on or before the first day of March of succeeding tax year.

Be it enacted by the Legislature of West Virginia:

That sections nine and fifty-five, 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.

§11-21-55. Declaration of estimated tax.

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 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 prior to the first day of January, one thousand nine hundred ninety, shall be given effect in determining the taxes imposed by this article for any taxable year beginning the first day of January, one thousand nine hundred eighty-nine, or thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred ninety, shall be given effect.

§11-21-55. Declaration of estimated tax.

(a) Requirement of declaration.—Every resident and nonresident individual shall make a declaration of his estimated tax for the taxable year, containing such information as the tax commissioner may prescribe by regulations or instructions, if his West Virginia adjusted gross income, other than from wages on which tax is withheld under this article, can reasonably be expected to exceed four hundred dollars plus the sum of the West Virginia personal exemptions to which he is entitled.

(b) Definition of estimated tax.—The term “estimated tax” means the amount which an individual estimates to be his income tax under this article for the taxable year, less the amount which he estimates to be the sum of any credits allowable against the tax.

(c) Joint declaration of husband and wife.—A husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable
years. If a joint declaration is made but husband and wife elect to determine their taxes under this article separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(d) Time for filing declaration.—A declaration of estimated tax of an individual other than a farmer shall be filed on or before the fifteenth day of April of the taxable year, except that if the requirements of subsection (a) are first met:

(1) After the first day of April and before the second day of June of the taxable year, the declaration shall be filed on or before the fifteenth day of June, or

(2) After the first day of June and before the second day of September of the taxable year, the declaration shall be filed on or before the fifteenth day of September, or

(3) After the first day of September of the taxable year, the declaration shall be filed on or before the fifteenth day of January of the succeeding year.

(e) Declaration of estimated tax by a farmer.—A declaration of estimated tax of an individual having an estimated West Virginia adjusted gross income from farming for the taxable year which is at least two thirds of his total estimated West Virginia adjusted gross income for the taxable year may be filed at any time on or before the fifteenth day of January of the succeeding year, in lieu of the time otherwise prescribed.

(f) Declaration of estimated tax of forty dollars or less.—A declaration of estimated tax of an individual having a total estimated tax for the taxable year of forty dollars or less may be filed at any time on or before the fifteenth day of January of the succeeding year under regulations of the tax commissioner.

(g) Amendments of declaration.—An individual may amend a declaration under regulations of the tax commissioner.
Return as declaration or amendment.—If on or before the fifteenth day of February of the succeeding taxable year an individual other than a farmer files his return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return:

(1) Such return shall be considered as his declaration, if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before the fifteenth day of January.

(2) Such return, if filed on or before the fifteenth day of January, shall be considered an amendment permitted by subsection (g) if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

Fiscal year.—This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

Short taxable year.—An individual having a taxable year of less than twelve months shall make a declaration in accordance with regulations of the tax commissioner.

Declaration for individual under a disability.—The declaration of estimated tax for an individual who is unable to make a declaration by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

Return of farmer as declaration of estimated tax.—If on or before the first day of March of the succeeding taxable year an individual who is a farmer files his return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return, such return shall be considered as his declaration, if no declaration was required to be filed during the taxable year, but is
1438 Taxation

99 otherwise required to be filed on or before the fifteenth
100 day of January, for a taxable year ending after the
101 thirty-first day of December, one thousand nine hundred
102 eighty-nine.

CHAPTER 179
(H. B. 4794—By Delegates Farley and Kiss)

[Passed March 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three-a and five, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, thirteen and thirteen-a, article twenty-four of said chapter eleven, all relating generally to business franchise and corporation net income taxes; updating meaning of certain terms used in such tax laws to bring them into conformity with their meanings for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-eight; making the business franchise tax rules for allocation of other sales conform with the corporation net income tax rules for apportionment of such other sales; authorizing use of combined business franchise tax and corporation net income tax returns and combined forms for declaring estimated tax and making installment payments of estimated tax; providing rule for when amount remitted with combined return is less than the taxes show due on such combined return; requiring the method of filing for business franchise tax to be the same as the method of filing for corporation net income tax and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That sections three-a and five, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three, thirteen and thirteen-a, article twenty-four of said chapter eleven be amended and reenacted, all to read as follows:
ARTICLE 23.

BUSINESS FRANCHISE TAX.

§11-23-3a. Meaning of terms; general rule.

§11-23-5. Apportionment of tax base.

§11-23-3a. Meaning of terms; general rule.

Any term used in this article shall have the 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 of this article. Any reference in this article to the laws of the United States, or to the Internal Revenue Code, or to the federal income tax law shall mean the provisions of the laws of the United States as related to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred ninety, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred eighty-nine, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred ninety, shall be given effect.

§11-23-5. Apportionment of tax base.

(a) A taxpayer subject to the tax imposed by this article and also taxable in another state shall, for the purposes of this tax, apportion its tax base to this state by multiplying its tax base by a fraction, the numerator of which is the sum of the property factor, plus the payroll factor, plus two times the sales factor, all of which shall be determined as hereinafter provided in this section, and the denominator of which is four, reduced by the number of factors, if any, having no denominator, with the sales factor counting as two factors.

(b) Property factor.—The property factor is a fraction, the numerator of which is the average value of the
taxpayer's real and tangible personal property owned or rented and used by it in this state during the taxable year, and the denominator of which is the average value of all real and tangible personal property owned or rented by the taxpayer and used by it during the taxable year, which is reported on Schedule L of Federal Form 1120 (or 1065 for partnerships), plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(c) Value of property.—Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: Provided, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under regulations of the tax commissioner. Property rented by the taxpayer from others shall be valued at eight times the net annual rental rate. Net annual rental rate is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of the property and includes:

(1) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(2) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(d) Movable property.—The value of movable tangible personal property used both within and without this state shall be included in the numerator to the extent of its utilization in this state. The extent of such
utilization shall be determined by multiplying the original cost of such property by a fraction, the numerator of which is the number of days of physical location of the property in this state during the taxable period, and the denominator of which is the number of days of physical location of the property everywhere during the taxable year. The number of days of physical location of the property may be determined on a statistical basis or by such other reasonable method acceptable to the tax commissioner.

(e) Leasehold improvements.—Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the lessee regardless of whether the lessee is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(f) Average value of property.—The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: Provided, That the tax commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(g) Payroll factor.—The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer, and the denominator of which is the total compensation paid by the taxpayer during the taxable year as shown on the taxpayer's federal income tax return as filed with the internal revenue service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation, or as shown on a pro forma return.

(h) Compensation.—The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.
Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only the amounts paid directly to employees shall be included in the payroll factor. Amounts considered paid directly to employees include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided such amounts constitute income to the recipient for federal income tax purposes.

(i) **Employee.**—The term “employee” means:

(1) Any officer of a corporation; or

(2) Any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee.

(j) **Compensation paid in this state.**—Compensation is paid in this state if:

(1) The employee’s service is performed entirely within the state;

(2) The employee’s service is performed both within and without the state, but the service performed without the state is incidental to the individual’s service within the state. The word “incidental” means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

(3) Some of the service is performed in the state and:

(A) The employee’s base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

(B) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee’s residence is in this state.

The term “base of operations” is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communi-
cations from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(k) Sales factor.—The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year (business income), less returns and allowances. The denominator of the fraction shall be the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business during the taxable year (business income), and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120 or 1065, and consisting of those certain pertinent portions of the (gross income) elements set forth: Provided, That if either the numerator or the denominator includes interest or dividends from obligations of the United States government which are exempt from taxation by this state, the amount of such interest and dividends, if any, shall be subtracted from the numerator or denominator in which it is included.

(l) Allocation of sales of tangible personal property.

(1) Sales of tangible personal property are in this state if:

(A) The property is received in this state by the purchaser, other than the United States government, regardless of the f.o.b. point or other conditions of the sale. In the case of delivery by common carrier or other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by the purchaser, constitutes delivery to the purchaser in this state.
state, and direct delivery outside this state to a person
or firm designated by the purchaser does not constitute
delivery to the purchaser in this state, regardless of
where title passes or other conditions of sale; or

(B) The property is shipped from an office, store,
warehouse, factory or other place of storage in this state
and the purchaser is the United States government.

(2) All other sales of tangible personal property
delivered or shipped to a purchaser within a state in
which the taxpayer is not taxed as defined in subsection
(b), section seven, article twenty-four of this chapter
shall be excluded from the denominator of the sales
factor.

(m) Allocation of other sales.—Sales, other than sales
of tangible personal property, are in this state if:

(1) The income-producing activity is performed in this
state; or

(2) The income-producing activity is performed both
in and outside this state and a greater proportion of the
income-producing activity is performed in this state
than in any other state, based on costs of performance.

(n) Income-producing activity.—The term “income-
producing activity” applies to each separate item of
income and means the transactions and activity directly
engaged in by the taxpayer in the regular course of its
trade or business for the ultimate purpose of obtaining
gain or profit. Such activity does not include transac-
tions and activities performed on behalf of the taxpayer,
such as those conducted on its behalf by an independent
contractor. “Income-producing activity” includes, but is
not limited to, the following:

(1) The rendering of personal services by employees
with utilization of tangible and intangible property by
the taxpayer in performing a service;

(2) The sale, rental, leasing, licensing or other use of
real property;

(3) The sale, rental, leasing, licensing or other use of
tangible personal property; or
(4) The sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, in itself, an income-producing activity.

(o) *Cost of performance.*—The term "cost of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(p) *Other methods of allocation.*

(1) *General.*—If the allocation and apportionment provisions of subsection (a) do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may petition for, or the tax commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's tax base. Such petition shall be filed no later than the due date of the annual return for the taxable year for which the alternative method is requested, determined without regard to any extension of time for filing such return, and the petition shall include a statement of the petitioner's objections and of such alternative method of allocation or apportionment as it believes to be proper under the circumstances with such detail and proof as the tax commissioner may require.

(2) *Burden of proof.*—In any proceeding before the tax commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in subdivision (1) of this subsection is sought, on the ground that the allocation and apportionment provisions of subsection (a) do not fairly represent...
the extent of the taxpayer's business activities in this
state, the burden of proof shall:

(A) If the tax commissioner seeks employment of one
of such methods, be on the tax commissioner, or
(B) If the taxpayer seeks employment of one of such
other methods, be on the taxpayer.

(q) *Effective date.*—The amendments to this section
made by this act shall apply to all taxable years ending
after the effective date of this act.

**ARTICLE 24. CORPORATION NET INCOME TAX.**

§11-24-3. Meaning of terms; general rule.

§11-24-13. Returns; time for filing.


§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 prior to the first day
of January, one thousand nine hundred ninety, shall be
given effect in determining the taxes imposed by this
article for any taxable year beginning the first day of
January, one thousand nine hundred eighty-nine, and
thereafter, but no amendment to the laws of the United
States effective on or after the first day of January, one
thousand nine hundred ninety, 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
26 Reform Act of 1986.” Except when inappropriate, any
27 references in any law, executive order, or other
document:
29 (1) To the Internal Revenue Code of 1954 shall include
30 reference to the Internal Revenue Code of 1986, and
31 (2) To the Internal Revenue Code of 1986 shall include
32 a reference to the provisions of law formerly known as
33 the Internal Revenue Code of 1954.

§11-24-13. Returns; time for filing.
1 (a) On or before the fifteenth day of the third month
2 following the close of a taxable year, an income tax
3 return under this article shall be made and filed by or
4 for every corporation subject to the tax imposed by this
5 article.

6 (b) The tax commissioner may combine into one form
7 the annual return due under this article and the annual
8 return due under article twenty-three of this chapter.
9 When a combined business franchise tax and corpora-
10 tion net income tax annual return is filed by a taxpayer,
11 the amount of tax remitted shall be applied first against
12 any business franchise tax that may be due for the
13 taxable year under article twenty-three of this chapter
14 and then against any corporation net income tax that
15 may be due for the taxable year. The tax commissioner
16 may also combine the forms for filing declarations of
17 estimated tax and the forms for making installment
18 payments of estimated tax.

19 (c) Effective date.—The amendments to this section
20 made by this act shall apply to all taxable years ending
21 after the effective date of this act.

1 (a) Privilege to file.—An “affiliated group” of corpora-
2 tions (as defined for purposes of filing a consolidated
3 federal income tax return) shall, subject to the provi-
4 sions of this section and in accordance with any
5 regulations prescribed by the tax commissioner, have
6 the privilege of filing a consolidated return with respect
7 to the tax imposed by this article for the taxable year
in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group and which are included in such return consent to the filing of such return. The filing of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(b) Election binding.—If an affiliated group of corporations elects to file a consolidated return under this article for any taxable year ending after June thirtieth, one thousand nine hundred eighty-seven, such elections once made, shall not be revoked for any subsequent taxable year without the written approval of the tax commissioner consenting to the revocation.

(c) Method of filing under this article deemed controlling for filing under other business taxes articles.—The taxpayer shall file on the same basis under article twenty-three of this chapter as such taxpayer has filed pursuant to this article. Such filing method may not be changed in respect of this article or article twenty-three of this chapter without the written consent of the tax commissioner.

(d) Regulations.—The tax commissioner shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted, in such manner as the tax commissioner deems necessary to clearly reflect the income tax liability and the income factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(e) Computation and payment of tax.—In any case in which a consolidated return is filed, or is required to be filed, the tax due under this article from the affiliated
group, shall be determined, computed, assessed, col-
lected and adjusted in accordance with regulations
prescribed by the tax commissioner, in effect on the last
day prescribed by law for the filing of such return, and
such affiliated group shall be treated as the taxpayer.

(f) Consolidated return required.—If any affiliated
group of corporations has not elected to file a consoli-
dated return, the tax commissioner may require such
corporations to make a consolidated return in order to
clearly reflect the taxable income of such corporations.

(g) Effective date.—The amendments to this section
made by this act shall apply to all taxable years ending
after the effective date of this article.

CHAPTER 180
(Com. Sub. for H. B. 4035—By Delegate D. Cook)

[Passed February 27, 1990; in effect ninety
days from passage. Approved by the Governor.] 

AN ACT to amend and reenact section six, article thirteen,
chapter seventeen-c of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to prohibiting nonhandicapped people from parking in
parking spaces in privately owned parking lots, parking
garages, or other parking areas clearly marked for
people with handicapping conditions or people who are
physically disabled, and providing a penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for
disabled; qualification; application; viola-
tion.

(a) Any owner of a Class A motor vehicle subject to
registration under the provisions of article three,
chapter seventeen-a of this code, who is:
(1) A physically handicapped person with limited mobility;
(2) A relative of a person who is a physically handicapped person with limited mobility;
(3) A person who regularly resides with a person who is a physically handicapped person with limited mobility; or
(4) A person who regularly transports a person who is a physically handicapped person with limited mobility, may apply for a special registration plate or a mobile windshield placard by submitting to the commissioner:
   (i) An application therefor on a form prescribed and furnished by the commissioner, specifying whether the applicant desires a special registration plate or a mobile windshield placard; and
   (ii) A certificate issued by a person licensed to practice medicine stating that the applicant or the applicant’s spouse or a member of the applicant’s immediate family residing with him is a physically handicapped person with limited mobility as defined in this section.

Upon receipt of the application, the physician’s certificate and the registration fee, if he finds that the applicant qualifies for the special registration plate or mobile windshield placard provided for in this subsection, the commissioner shall issue to such applicant an appropriately designed and appropriately designated special registration plate or mobile windshield placard. The special plate shall be used in place of a regular license plate.

As used in this section, a physically handicapped person with limited mobility is any person who suffers from a permanent physical condition making it unduly difficult and burdensome for such person to walk.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the mobile windshield placard provided for in this subsection (a), and any person who falsely certifies that a person is physically handicapped with limited mobility in order that an
applicant may be issued the special plate, is guilty of
a misdemeanor, and, upon conviction thereof, in addition
to any other penalty he may otherwise incur, shall be
fined not less than one hundred dollars nor more than
one thousand dollars, or imprisoned in the county jail
not more than one year, or both fined and imprisoned.

(b) Any physically disabled person, any person who is
a relative of a physically disabled person, any person
who regularly resides with a physically disabled person,
or any person who regularly transports a physically
disabled person, may apply for a vehicle decal for a
Class A vehicle by submitting to the commissioner:

(1) An application therefor on a form prescribed and
furnished by the commissioner;

(2) A certificate issued by a person licensed to
practice medicine stating that the applicant or the
applicant’s relative is a physically disabled person, or
that the person regularly residing with the applicant or
regularly transported by the applicant is a physically
disabled person, as defined in this section, and stating
the expected duration of the disability; and

(3) A fee of one dollar.

Upon receipt of the application, the physician’s
certificate and the registration fee, if he finds that the
applicant qualifies for the vehicle decal provided for in
this subsection, the commissioner shall issue to such
applicant an appropriately designed decal. The decal
shall be displayed on the motor vehicle in the manner
prescribed by the commissioner and shall be valid for
such period of time as the certifying physician has
determined that the disability will continue, which
period of time, reflecting the date of expiration, shall be
conspicuously shown on the face of the decal.

As used in this section “physically disabled person”
means any person who has sustained a temporary
disability rendering it unduly difficult and burdensome
for him to walk.
Any person who falsely or fraudulently obtains or seeks to obtain the vehicle decal provided for in this subsection, and any person who falsely certifies that a person is physically disabled in order that an applicant may be issued the vehicle decal, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he may otherwise incur, shall be fined not less than fifty nor more than one hundred dollars, or imprisoned in the county jail not more than thirty days, or both fined and imprisoned.

(c) Free stopping, standing or parking places marked "reserved for disabled persons" shall be designated in close proximity to all state, county and municipal buildings and other public facilities. Such places shall be reserved solely for physically disabled and handicapped persons during the hours that such buildings are open for business.

Any person whose vehicle properly displays a valid special registration plate, mobile windshield placard or decal may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, That this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section shall take precedence and shall apply.

The privileges provided for in this subsection shall apply only during those times when the vehicle is being used for the transportation of a physically handicapped or disabled person. Any person who knowingly exercises, or attempts to exercise, such privileges at a time when the vehicle is not being used for the transportation of a physically handicapped or disabled person is guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he may otherwise incur,
shall be fined not less than ten nor more than fifty dollars, or imprisoned in the county jail for not more than thirty days, or both fined and imprisoned.

(d) No person may stop, stand or park a motor vehicle in an area designated, zoned or marked for the handicapped or physically disabled, and no person may stop, stand or park any motor vehicle at special, clearly marked, parking locations provided for the handicapped or physically disabled in or on privately owned parking lots, parking garages, or other parking areas, when such person is not physically disabled or handicapped and does not have displayed upon his vehicle a distinguishing insignia for the handicapped issued by the commissioner: Provided, That any person in the act of transporting a handicapped or physically disabled person, as defined by this article, may stop, stand or park a motor vehicle not displaying a distinguishing insignia for the handicapped in an area designated, zoned or marked for the handicapped or physically disabled for the limited purposes of loading or unloading his handicapped or physically disabled passenger: Provided, however, That such vehicle shall be promptly moved after the completion of such limited purposes.

Any person who violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than twenty-five dollars.

(e) The commissioner shall adopt and promulgate rules and regulations in accordance with the provisions of chapter twenty-nine-a of this code to effectuate the provisions of this section.

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CHAPTER 181

(Com. Sub. for S. B. 109—By Senators Brackenrich and Spears)

[Passed March 5, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter twelve 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 thirteen; to amend and reenact section five, article five of said chapter; and to amend and reenact sections four, five, six, nine, nine-c and fifteen, article six of said chapter, all relating to responsibilities of state treasurer; removing certain reporting requirements; requiring monthly reconciliation of statements and records; authorizing payment for banking services; protection and handling of securities; requiring the board to appoint an executive secretary upon vacancy; term; organization; qualifications of executive secretary; allowing board of investments to appoint its own staff; powers of and removing board of investments; authorizing contracting with in or out-of-state banks; costs and expenses of board; special revenue account established; requiring the deposit of charges against earnings into the general revenue fund; authorizing expenditure of certain funds for expenses for claims, for restructuring and expenses relating to third party liability for certain losses; permitting transfer of certain funds into special revenue account; permitting transfer of excess funds in liquidity investment pool; permissible investments; providing quarterly audits of transactions of board of investments; providing itemized accounts; and permitting state board of investments and removing authority of certain state agencies to make independent investments.

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

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

**Article**

1. **State Depositories.**
2. **Public Securities.**
3. **West Virginia Board of Investments.**
ARTICLE 1. STATE DEPOSITORIES.

§12-1-10. Treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.

§12-1-13. Payment of banking services.

§12-1-10. Treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.

The treasurer shall keep in his or her office a record showing the account of each depository. Under the account of each depository entry shall be made showing the amount and date of each deposit, the amount and date of each withdrawal and the balance on deposit. The treasurer shall cause the state's account with each depository to be settled at the end of every month of the year and the balance in the depository to the credit of the treasury to be carried forward to the account of the next month.

All the statements and records shall be reconciled monthly and the reconciled reports showing the average daily balances of each month shall be kept in the treasurer's office. The reconciled records of the average daily balance for each month shall be kept in the treasurer's office for a period of five years.

§12-1-13. Payment of banking services.

The treasurer is authorized to pay for banking services, and services ancillary thereto, by either a compensating balance in a noninterest bearing account maintained at the financial institution providing the services or with a state warrant as described in section one, article five of this chapter.

If payment is made by a state warrant, the board of investments is authorized to establish within the consolidated fund an investment pool which will generate sufficient income to pay for all banking service provided to the state. All income earned by the investment pool shall be paid into a special account of the state treasurer of West Virginia to be known as the banking services account and shall be used solely for the purpose
of paying for all banking services and services ancillary thereto, provided to the state.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-5. Protection and handling of securities.

The securities retained in the treasury shall be kept in a vault. The treasurer shall use due diligence in protecting the securities against loss from any cause. The treasurer shall designate certain employees to take special care of the securities. Only the treasurer and the designated employees may have access to such securities, and at least two of these persons shall be present whenever the securities are handled in any manner. The treasurer may, with the approval of the board of investments, contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of such securities, which contract shall prescribe the rules for the handling and protection thereof.

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

§12-6-4. Officers; executive secretary; term; organization; board staff; surety bonds for members and employees.

§12-6-5. Powers of the board.

§12-6-6. Costs and expenses; fees for services; special revenue account; costs of determining third parties’ liability; recoupment of investment losses.


§12-6-9c. Authorization of additional investments.

§12-6-15. Audits.

§12-6-4. Officers; executive secretary; term; organization; board staff; surety bonds for members and employees.

(a) The governor shall be the chairman and the custodian of all funds, securities and assets held by the board. The office of the state treasurer shall act as a depository for all funds, that may, from time to time, from whatever source, be made available to the board for investment. The board shall elect an executive secretary to serve for a term of six years, such election to be held at the board’s first meeting after the first effective date of this article. Effective with any vacancy in the position of executive secretary, the board shall
appoint an executive secretary to serve at the will and
pleasure of the board, which executive secretary may
not be a member of the board: Provided, That the
executive secretary shall have at least a bachelor's
degree in either business administration or accounting
in an accredited program and/or have at least five years'
experience in investment management or securities
markets, said experience to have occurred within the ten
years next preceding the date of appointment of the
secretary: Provided, however, That the executive secre-
tary may be paid a salary as determined by the board
out of appropriations by the Legislature. The office of
the state treasurer may act as staff agency for the board:
Provided further, That effective the first day of July, one
thousand nine hundred ninety, the board may appoint
a staff to act for the board.

(b) The board shall meet quarterly and may include
in its bylaws procedures for the calling and holding of
additional meetings.

(c) Each member of the board shall give a separate
and additional fidelity bond from a surety company
qualified to do business within this state in a penalty
amount of two hundred fifty thousand dollars for the
faithful performance of his duties as a member of the
board. In addition, the board will purchase a blanket
bond for the faithful performance of its duties in the
amount of five million dollars excess of the two hundred
fifty thousand dollar individual bond required of each
member by the provisions of this section. The board may
require a fidelity bond from a surety company qualified
to do business in this state for any person who has
charge of, or access to, any securities, funds or other
moneys held by the board, and the amount of such
fidelity bond shall be fixed by the board. The premiums
payable on all fidelity bonds shall be an expense of the
board.

§12-6-5. Powers of the board.

The board may exercise all powers necessary or
appropriate to carry out and effectuate its corporate
purposes. The board may:
(1) Adopt and use a common seal and alter the same at pleasure;

(2) Sue and be sued;

(3) Enter into contracts and execute and deliver instruments;

(4) Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;

(5) Promulgate and enforce bylaws and rules for the management and conduct of its affairs;

(6) Retain and employ legal, accounting, financial and investment advisors and consultants;

(7) Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds in interest earning deposits;

(8) Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;

(9) Engage in financial transactions whereby securities are purchased by the board under an agreement providing for the resale of such securities to the original seller at a stated price;

(10) Engage in financial transactions whereby securities held by the board are sold under an agreement providing for the repurchase of such securities by the board at a stated price;

(11) Consolidate and manage moneys, securities and other assets of the pension funds and other funds and accounts of the state and the moneys of political subdivisions which may be made available to it under the provisions of this article;

(12) Enter into agreements with political subdivisions of the state whereby moneys of such political subdivisions are invested on their behalf by the board;

(13) Charge and collect administrative fees from political subdivisions for its services;
(14) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management thereof; and

(15) Contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities held by the board.

§12-6-6. Costs and expenses; fees for services; special revenue account; costs of determining third parties' liability; recoupment of investment losses.

(a) The board shall make a charge against the earnings of the various funds managed by the board for all necessary expenses of the board. The charge shall be on a pro rata basis of actual earnings of the various funds managed by the board. The charge shall be deposited to the credit of the general revenue fund. All expenses relating to the responsibilities of the office of the state treasurer as staff agency for the board of investments shall be paid from the general appropriation for that office.

(b) There is hereby created in the state treasury a special revenue account to be known as the "loss expenses account". The purpose of this account is to pay costs, fees and expenses incurred, or to be incurred, for the following: (1) Investigation and pursuit of claims against third parties for the investment losses incurred during the period beginning the first day of August, one thousand nine hundred eighty-four, and ending on the thirty-first day of January, one thousand nine hundred eighty-nine; (2) for consulting services regarding the restructuring of the office of the treasurer following said losses; and (3) for implementation of the recommendations made as a result of the consultations regarding restructuring. That special revenue account shall be funded by depositing income derived by the board from securities lending and recoveries from third parties. The board is authorized to deposit into the special revenue account, and to expend in accordance with the provisions of this section, those funds received from such recoveries and not more than two million dollars
annually from income derived by the board from
securities lending. Funds in the loss expenses account
in excess of reasonably estimated costs, fees and
expenses for any fiscal year and any funds remaining
in such special revenue account at the end of each fiscal
year after expenditures, for the purposes specified
above, may be transferred by the board to its "liquidity
investment pool", to be used, in such manner as the
board determines, to eliminate the present imbalance in
the state accounts caused by the investment losses
described above in this subsection. The authority for this
special revenue account expires on the thirtieth day of
June, one thousand nine hundred ninety-five.


1 Notwithstanding the restrictions which may otherwise
2 be provided by law as to the investment of funds, the
3 board may invest funds made available to it in any of
4 the following:

5 (a) Any direct obligation of, or obligation guaranteed
6 as to the payment of both principal and interest by, the
7 United States of America;

8 (b) Any evidence of indebtedness issued by any
9 United States government agency guaranteed as to the
10 payment of both principal and interest, directly or
11 indirectly, by the United States of America, including,
12 but not limited to, the following: Government National
13 Mortgage Association, Federal Land Banks, Federal
14 Home Loan Banks, Federal Intermediate Credit Banks,
15 Banks for Cooperatives, Tennessee Valley Authority,
16 United States Postal Service, Farmers Home Admin-
17istration, Export-Import Bank, Federal Financing Bank,
18 Federal Home Loan Mortgage Corporation, Student
19 Loan Marketing Association and Federal Farm Credit
20 Banks;

21 (c) Any evidence of indebtedness issued by the
22 Federal National Mortgage Association to the extent
23 such indebtedness is guaranteed by the Government
24 National Mortgage Association;

25 (d) Any evidence of indebtedness that is secured by a
first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;

(e) Direct and general obligations of this state;

(f) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, such trust at the time of the acquisition of such undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;

(g) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association organized and operating in the United States: Provided, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: Provided, however, That if any commercial paper and/or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by such an agency: Provided further, That any such security not rated in one of the two highest rating grades by any such agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the written recommendation from an investment adviser that has over three hundred million dollars in other funds under its management;

(h) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution organized and operating in the United States, which mature in less than one year and are fully collateralized; and

(i) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally
§12-6-9c. Authorization of additional investments.

Notwithstanding the restrictions which may otherwise be provided by law with respect to the investment of funds, the state board of investments, all administrators, custodians or trustees of pension funds, each political subdivision of this state and each county board of education is authorized to invest funds in the securities of or any other interest in any investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. §80a, the portfolio of which is limited to direct obligations of or obligations guaranteed as to the payment of both principal and interest by the United States of America and to repurchase agreements fully collateralized by United States government obligations: Provided, That the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

§12-6-15. Audits.

There shall be a continuous postaudit conducted by the legislative auditor of the investment transactions of the board, and a copy thereof for the preceding calendar year shall be furnished to each member of the Legislature on or before the first day of February of each year. The board shall further cause to be conducted a quarterly internal audit, by the state treasurer's staff using generally accepted government auditing standards, of all investment transactions of the board and an annual external audit, by a nationally recognized accounting firm in conjunction with the annual federal audit, of all investment transactions of the board: Provided, That the board shall on a monthly basis provide to each political subdivision, state agency and any other entity investing moneys in the consolidated fund or consolidated pension fund an itemized account reflecting the portfolio value of the investments of each said political subdivision, state agency and any other entity in the consolidated fund or consolidated pension fund as provided in section four, article one of this chapter.
The board shall further provide a monthly statement reflecting the interest earned by each said political subdivision, state agency or other investing entity and the method by which said interest has been calculated.

CHAPTER 182
(Com. Sub. for S. B. 581—By Senator Tomblin)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to the state treasurer; making certain legislative findings regarding unreconciled items in state bank accounts; requiring treasurer to reconcile items and make certain transfers; requiring treasurer to make certain reports; creating special account known as “single audit account” and authorizing board of investments to apply balances in single audit account toward imbalances caused by investment losses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-13. Bank reconciliations; balancing state accounts.

1 The Legislature finds that the bank accounts of the treasury contain numerous unreconciled items and that the single audit report for the period ending on the thirtieth day of June, one thousand nine hundred eighty-nine, states that as of the end of the audit period there were forty million, ninety-three thousand, six hundred eighty-one dollars and forty-seven cents more in the bank accounts maintained by the state treasurer than
Therefore, the Legislature directs that:

(a) The state treasurer shall take all necessary actions to identify all unreconciled items on the bank accounts maintained by the state treasurer. All items identified on or before the thirtieth day of June, one thousand nine hundred ninety, shall be recorded in the state account(s) to which they have been identified. Any unreconciled items not identified on or before the thirtieth day of June, one thousand nine hundred ninety, shall be recorded in a special revenue account known as the "single audit account".

(b) All moneys identified in the single audit report as not having been recorded on the accounting records of the state treasurer shall be recorded in the single audit account. If after the recording of said moneys in the single audit account, the treasurer is able to identify the appropriate state accounts the moneys should be credited to, he is hereby authorized to transfer such moneys from the single audit account to the appropriate account.

(c) Effective on the first day of July, one thousand nine hundred ninety, the state treasurer shall file a report with the governor reflecting all actions taken concerning unreconciled items in bank accounts maintained by the state treasurer through the period ending on the thirtieth day of June, one thousand nine hundred ninety. After the governor has reviewed the report and determined that the state treasurer has complied with all previous provisions of this code section, the governor shall certify the report to the board of investments. The board of investments is then authorized to use, in such manner as it determines, the balance in the single audit account to eliminate any imbalance in the state accounts caused by the investment losses incurred during the period beginning on the first day of August, one thousand nine hundred eighty-four, and ending on the thirty-first day of January, one thousand nine hundred eighty-nine.

(d) Effective on the first day of July, one thousand
nine hundred ninety, the state treasurer shall take
action to ensure that all bank accounts of the state
treasurer are reconciled each month. If after six months
from receipt of a bank statement, any items remain as
unreconcilable, the state treasurer shall record such
amounts as a debit or credit to the state’s general
revenue fund.

CHAPTER 183
(Com. Sub. for S. B. 101—By Senator Chafin)
[Passed February 8, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article
sixteen-a, chapter seventeen 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-a,
permitting the continued toll collection at the intersection of U.S. Route 19 and the West Virginia Turnpike;
implementing a system of commuter passes; and providing for the application of rule making to certain
toll increases.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article sixteen-a, chapter seventeen 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-a, all to read as follows:

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DE-
VELOPMENT AND TOURISM AUTHORITY.

§17-16A-18. Cessation of tolls; commuter pass system.
§17-16A-18a. Corridor “L” toll fees authorized; commuter pass; annual report.

§17-16A-18. Cessation of tolls; commuter pass system.

1 (a) Except as provided herein, when all bonds issued
2 under the provisions of this article in connection with
3 any parkway project or projects and the interest thereon
4 shall have been paid or a sufficient amount for the
payment of all such bonds and the interest thereon to
the maturity thereof shall have been set aside in trust
for the benefit of the bondholders, such project or
projects, if then in good condition and repair to the
satisfaction of the commissioner of the state division of
highways, shall be transferred to the state division of
highways and shall thereafter be maintained by the
state division of highways free of tolls: Provided, That
the parkways authority may thereafter charge tolls for
the use of any such project and for the reconstruction,
improvement, maintenance and repair thereof, except as
may be limited by applicable federal laws, and pledge
such tolls to the payment of bonds issued under the
provisions of this article in connection with another
project or projects, or any combination thereof, but any
such pledge of tolls of a parkway project to the payment
of bonds issued in connection with another project or
projects shall not be effectual until the principal of and
the interest on the bonds issued in connection with the
first mentioned project shall have been paid or provision
made for their payment.

(b) No later than the first day of February, one
thousand nine hundred ninety, the parkways authority
shall discontinue, remove and not relocate all toll
collection facilities on the West Virginia Turnpike as the
same existed on June first, one thousand nine hundred
eighty-nine, except for the three main toll barriers and
collection facilities, and provided solely that the
provisions of section eighteen-a are complied with, the
toll collection facilities at the intersection of U.S. Route
19 (Corridor “L”) and said turnpike: Provided, That
nothing herein may be construed to prohibit placement
of new tolls to the extent permitted by federal law for
any new expressway, turnpike, trunkline, feeder road,
state local service road, or park and forest road
connected to the West Virginia Turnpike and con-
structed after the first day of June, one thousand nine
hundred eighty-nine.

§17-16A-18a. Corridor “L” toll fees authorized; commuter
pass; annual report.

(a) The parkways authority is hereby authorized to
operate the currently existing toll collection facility located at the interchange of U.S. Route 19 (Corridor "L") and said turnpike subject to the following:

(1) The toll fee charges by the parkways, economic development and tourism authority at its toll facilities located at the interchange of U.S. Route 19 (Corridor "L") and said turnpike shall not exceed those toll charges levied and collected by the authority at said interchange as of the first day of January, one thousand nine hundred ninety, and hereafter, no proposed increase in such toll fees shall be implemented by the parkways authority unless the authority shall have first complied with validly promulgated and legislatively approved rules and regulations pursuant to the applicable provisions of chapter twenty-nine-a of this code;

(2) As soon as reasonably possible after the effective date of this legislation, but in no event later than the first day of July, one thousand nine hundred ninety, the authority shall establish, advertise, implement and otherwise make generally available to all qualified members of the public, resident or nonresident, a system of commuter passes, in a form to be determined by the authority: Provided, That said system of commuter passes shall, at a minimum, permit the holder of such pass or passes, after paying the applicable fee to the authority, to travel through the U.S. Route 19 (Corridor "L") turnpike interchange and toll facilities on an unlimited basis, without additional charge therefor, for a period of one year after the issuance of said commuter pass or passes: Provided, however, That the cost for such commuter pass or passes shall in no event aggregate more than five dollars per year for a full calendar year of unlimited travel through the U.S. Route 19 (Corridor "L") turnpike interchange toll facilities.

To the extent required or necessary, the parkways authority is further hereby authorized and empowered, in addition to the extent previously authorized and empowered pursuant to section six and section thirteen-b, article sixteen-a of this chapter, to promulgate rules in accordance with chapter twenty-nine-a of this code with regard to the implementation of proposed future
toll increases at the U.S. Route 19 (Corridor "L")
turnpike toll facility;

(3) The system of commuter passes implemented in
accordance with the provisions of subdivision (2),
subsection (a), above, shall be available only for use
when operating or traveling in a Class "A" motor vehicle
as herein defined. Whoever shall knowingly or intention-
ally utilize any commuter pass issued in accordance
with this section while operating other than a Class "A"
motor vehicle, as herein defined, at the U.S. Route 19
(Corridor "L") turnpike toll facility, or any other toll
facility at or upon which such pass may later be usable,
shall be guilty of a misdemeanor, and for every such
offense shall, upon conviction thereof, be punished in
accordance with the provisions of section seventeen,
article sixteen-a of this chapter; and the parkways
authority shall hereafter be authorized and empowered
to cancel any such commuter pass or passes improperly
used in accordance with this section;

(4) In addition to the annual report required by
section twenty-six of this article, the parkways authority
will prepare and deliver to the governor, the speaker of
the house of delegates and the president of the senate
a separate annual report of toll revenues collected from
the U.S. Route 19 (Corridor "L") turnpike toll facility.
The report shall disclose separately the toll revenues
generated from regular traffic and the commuter pass
created herein. The reports shall include, but not be
limited to, disclosing separately the expenditure of said
toll revenues generated from the U.S. Route 19 (Corri-
dor "L") turnpike toll facility including a description of
the purposes for which such toll revenues are expended;

(5) In the event any court of competent jurisdiction
shall issue an order which adjudges that any portion of
subdivision (1), (2) or (3), subsection (a) of this section
is illegal, unconstitutional, unenforceable or in any
manner invalid, the parkways authority shall discon-
tinue, remove and not otherwise relocate the U.S. Route
19 (Corridor "L") turnpike toll facility within three
hundred sixty-five days after the date upon which said
court order is final or all appeals to said order have been exhausted;

(6) For the purpose of this section, a Class "A" vehicle shall be defined as a motor vehicle of passenger type and truck with a gross weight of not more than 8,000 pounds and registered or eligible for registration as a Class "A" vehicle in accordance with section one, article ten, chapter seventeen-a of this code as the same is currently constituted; and

(7) Notwithstanding any other provisions of the code to the contrary, the parkways authority may not promulgate emergency rules in accordance with section fifteen, article three, chapter twenty-nine-a of this code to increase or decrease toll fees or the commuter pass fee established herein.

(b) Nothing in this section is to be construed to apply to, regulate, or in any manner affect the operation of the three main line toll barriers and toll collection facilities currently located on the West Virginia Turnpike and operated by the parkways authority as Barrier A, Barrier B and Barrier C (I-64, I-77).

CHAPTER 184
(H. B. 4722—By Delegates Farley and Kiss)

AN ACT to amend and reenact sections eight, eleven, sixteen and eighteen, article eight, chapter thirty-six 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 eight-a and eight-b, all relating to the uniform disposition of unclaimed property act; property held by courts; providing for recovery of abandoned property; presumption of abandonment by federal government; report of abandoned property; statute of limitations; and deposit to state general fund.
Be it enacted by the Legislature of West Virginia:

That sections eight, eleven, sixteen and eighteen, article eight, chapter thirty-six 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 eight-a and eight-b, all to read as follows:

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

§36-8-8. Property held by courts and public officers and agencies.
§36-8-8a. Providing for recovery of abandoned property.
§36-8-8b. Presumption of abandonment of personal property held by federal government.
§36-8-16. Periods of limitation not a bar.
§36-8-18. Deposits of funds; trust and expense fund; records of deposits.

§36-8-8. Property held by courts and public officers and agencies.

(a) All intangible personal property held for the owner by any state or federal court, public corporation, public authority, or public officer in this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years is presumed abandoned: Provided, That this provision shall in no way affect such property in the custody or control of any state or federal court in any pending action.

(b) Notwithstanding the provisions of subsection (a) of this section, all intangible personal property in the custody or control of a general receiver of a state court of record appointed pursuant to the provisions of article six, chapter fifty-one of this code, that has remained unclaimed by the owner for more than seven years is presumed abandoned: Provided, That any such property in the custody or control of any such general receiver in which there is any contingent remainder interest, or any vested remainder interest which is subject to open to let in persons not yet in being or to open to let in members of any class, or any executory interest, or executory devise interest, or any base, qualified, conditional, or limited fee estate or interest, or any other
24 qualified, conditional, limited or determinable estate or
25 interest, shall not be presumed abandoned until such
26 property has remained unclaimed for more than seven
27 years after such estate or interest has vested or any such
28 class has closed and the persons entitled to such
29 property have been determined.

§36-8-8a. Providing for recovery of abandoned property.
1 With respect to property originated or issued by this
2 state, any political subdivision thereof or any entity
3 incorporated, organized or created therein, the following
4 provision shall apply:
5
(a) Unless presumed abandoned and subject to the
6 custody of this state by any other provision of law, all
7 intangible property, including, but not limited to, any
8 interest, dividend, or other earnings thereon, less any
9 lawful charges, that is held by a business association,
10 federal, state or local government or governmental
11 subdivision, agency or entity, or any other person or
12 entity, regardless of where the holder may be found, is
13 presumed abandoned and subject to the custody of this
14 state as unclaimed property if:

(1) The address of the owner was never known or the
15 last-known address of the owner is unknown; and
16
(2) The entity originating or issuing the intangible
17 property is in this state or any of its political subdivi-
18 sions or is incorporated, organized or created in this
19 state.

(b) Subsection (a) shall apply to all property held at
21 the time of enactment, or at any time thereafter,
22 regardless of when such property became or becomes
23 presumptively abandoned.

§36-8-8b. Presumption of abandonment of personal
property held by federal government.
1 (a) All tangible personal property or intangible
2 personal property, including choses in action in amounts
3 certain, and all debts owed, entrusted funds or other
4 property held by any federal, state or local government
5 or governmental subdivision, agency, entity, officer or
appointee thereof, shall be presumed abandoned in this state if the last-known address of the owner of the property is in this state and the property has remained unclaimed for seven years: Provided, That if another provision of law provides for a presumption of abandonment and custodial taking of the subject property by this state upon the passage of a longer period of time, such longer period of time shall control.

(b) This section shall apply to all abandoned property held by any federal, state or local government or governmental subdivision, agency, entity, officer or appointee thereof, at the time of enactment, or at any time thereafter, regardless of when such property became or becomes presumptively abandoned.


(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this article shall report to the state treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of fifty dollars or more presumed abandoned under this article;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last-known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under fifty dollars each may be reported in aggregate;

(4) The date when the property became payable, demandable or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the state treasurer
prescribes by rule as necessary for the administration
of this article.

(c) If the person holding property presumed aban-
doned is a successor to other persons who previously
held the property for the owner, or if the holder has
changed his name while holding the property, he shall
file with his report all prior known names and addresses
of each holder of the property.

(d) The report shall be filed before the thirty-first day
of March of each year as of the thirty-first day of
December next preceding. The state treasurer may
postpone the reporting date upon written request by any
person required to file a report.

(e) If the holder of property presumed abandoned
under this article knows the whereabouts of the owner
and if the owner's claim has not been barred by the
statute of limitations, the holder shall, before filing the
annual report, attempt to communicate with the owner
so that the owner may take necessary steps to prevent
abandonment from being presumed. A notice from the
holder to the owner sent to the owner's last-known
address by United States mail, postage prepaid, shall
satisfy the requirements of this subsection (e).

(f) Verification, if made by a partnership, shall be
executed by a partner; if made by an unincorporated
association or private corporation, by an officer, and if
made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this article shall
include all items of property which, under the provisions
hereof, would have been presumed abandoned on the
effective date of this article had this article been in
effect on the first day of July, one thousand nine
hundred fifty-two.

(h) The state treasurer may at reasonable times and
upon reasonable notice examine the records of any
person if he has reason to believe that the person has
failed to report property that should have been reported
pursuant to this section.

(i) Every person filing a report shall deliver or pay
to the state treasurer all abandoned property specified
in the report, at the time of the report.

If an examination of the records of a person results
in disclosure of property reportable and deliverable
under this section, the treasurer may assess the cost of
the examination against the holder at a rate established
by administrative regulation promulgated pursuant to
chapter twenty-nine-a of this code, but in no case may
the charges exceed the value of the property found to
be reportable and deliverable.

§36-8-16. Periods of limitation not a bar.

(1) The expiration of any period of time specified by
statute or court order, during which an action or
proceeding may be commenced or enforced to obtain
payment of a claim for money or recovery of property,
shall not prevent the money or property from being
presumed abandoned property, nor affect any duty to
file a report required by this article or to pay or deliver
abandoned property to the state treasurer.

(2) Notwithstanding any other provision of law, the
expiration of any period of time specified by law during
which an action or proceeding may be commenced or
enforced to obtain payment of a claim for money or
recovery of property shall not serve as a defense in any
action or proceeding brought by or on behalf of the state
treasurer against any federal, state or local government
or governmental subdivision, agency, entity, officer or
appointee thereof, for the payment or delivery of any
abandoned property to the state treasurer pursuant to
this chapter or to enforce or collect any penalty provided
by this article.

(3) This section shall apply to all abandoned property
held by any federal, state or local government or
governmental subdivision, agency, entity, officer or
appointee thereof, at the time of enactment, or at any
time thereafter, regardless of when such property
became or becomes presumptively abandoned.
§36-8-18. Deposits of funds; trust and expense fund; records of deposits.

(a) All funds received under this article, including the proceeds from the sale of abandoned property under section seventeen, shall forthwith be deposited by the state treasurer in a special fund to be known as the "trust and expense fund". Effective the first day of July, one thousand nine hundred ninety, all funds received under this article, including the proceeds from the sale of abandoned property under section seventeen of this article, shall forthwith be deposited by the state treasurer in the general fund.

(b) From said fund the state treasurer shall make prompt payment of claims duly allowed as hereinafter provided, and shall pay the necessary costs of selling abandoned property, of mailing notices, of making publications required by this article and of paying other operating expenses and administrative expenses reasonably incurred by the treasurer in the administration and enforcement of the provisions of this article. At any time when the balance of said fund shall exceed one hundred fifty thousand dollars, the state treasurer may, and at least once every fiscal year shall, transfer to the general revenue fund the balance of the trust and expense fund which shall exceed one hundred fifty thousand dollars. The treasurer is authorized to draw his requisitions for such sums upon the auditor in the manner provided by law. Effective the first day of July, one thousand nine hundred ninety, all operating expenses and administrative expenses incurred by the treasurer in the administration and enforcement of the provisions of this article shall be paid from an appropriation from the general revenue fund. The treasurer is further directed to make prompt payment of claims duly allowed as hereinafter provided from the general revenue fund.

(c) Before making any deposit to said fund, the state treasurer shall record the name and last-known address of each person appearing from the holder’s reports to be entitled to the abandoned property, and the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the
report of a life insurance corporation, its number, the 
name of the corporation and the amount due. Such 
records shall be available for public inspection at all 
reasonable business hours.

CHAPTER 185
(S. B. 301—Originating in the Committee on the Judiciary)

[Passed February 16, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, 
chapter twenty-one-a of the code of West Virginia, one 
thousand nine hundred thirty-one, as amended; to 
amend and reenact sections ten and ten-a, article five; 
section three, article six; and section eight, article eight- 
a, all of chapter twenty-one-a; to amend article nine, 
chapter twenty-one-a by adding thereto a new section, 
designated section nine; and to amend and reenact 
sections seven, eight, eleven and nineteen, article ten, 
chapter twenty-one-a of said code, all relating to 
unemployment compensation generally; providing for 
meetings of the board of review; establishing formulas 
and tables to determine payment rates; providing for the 
termination of solvency assessments on employers and 
employees; describing the conditions under which an 
individual is disqualified for benefits; providing for 
assessments on employers and employees to retire bonds 
and notes and pay interest owing to the federal 
government; defining the felony offense of failing to 
remit assessments, and establishing the penalty 
therefor; appropriating certain funds made available to 
the state under federal law; defining the misdemeanor 
offense of fraudulently obtaining or attempting to obtain 
benefits, and establishing the penalty therefor; provid- 
ing for the recovery of benefits paid on misrepresenta- 
tion; authorizing the commissioner to require certain 
information, and providing for the dissemination or 
confidentiality of information; and providing for the 
disclosure of information to child support agencies.

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

Article
4. Board of Review.
5. Employee Coverage and Responsibility.
6. Employee Eligibility; Benefits.
8A. Employment Security Debt Funds.

ARTICLE 4. BOARD OF REVIEW.

§21A-4-6. Offices; meetings.

1 The offices and meeting place of the board shall be at the capital; but the board may sit at such other places as the prompt and efficient hearing of claims may require. The board shall sit for hearing of appeals at least every ten days.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

§21A-5-10a. Optional assessments on employers and employees.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

1 (a) On and after July first, one thousand nine hundred eighty-one, an employer's payment shall remain two and seven-tenths percent, until:

4 (1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits.
(2) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least the percent of his average annual payroll as shown in Column B of Table II. His rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January first of a calendar year equal or exceed one hundred percent but are less than one hundred twenty-five percent of the average benefit payments from the trust fund for the three preceding calendar years, an employer’s rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

When the total assets of the fund as of January first of a calendar year equal or exceed one hundred twenty-five percent but are less than one hundred fifty percent, an employer’s rate shall be the amount appearing in Column E of Table II on line with the percentage in Column B.

When the total assets of the fund as of January first of a calendar year equal or exceed one hundred fifty percent, an employer’s rate shall be the amount appearing in Column F of Table II on line with the percentage in Column B.

### TABLE II

<table>
<thead>
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</tbody>
</table>

All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective June thirtieth, one thousand nine hundred sixty-seven, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June thirtieth, one thousand nine hundred eighty-four, the noncredited contribution identified in section seven of this article shall not be added to the employer's debit balance to determine the employer contribution rate.

Effective on and after the computation date of June thirtieth, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including ten percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of three percent of wages paid by them with respect to employment; except that effective on and after July first, one thousand nine hundred eighty-one, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including five percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of five and five-tenths percent of wages paid by them with respect to employment.

Effective on or after July first, one thousand nine hundred eighty-one, all employers with a debit balance
account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount in excess of five percent but less than ten percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of six and five-tenths percent of wages paid by them with respect to employment.

Effective on and after the computation date of June thirtieth, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount of ten percent or above of their average annual payroll shall make payments to the unemployment compensation fund at the rate of three and three-tenths percent of wages paid by them with respect to employment; except that effective on and after July first, one thousand nine hundred eighty-one, such payments to the unemployment compensation fund shall be at the rate of seven and five-tenths percent of wages paid by them with respect to employment or at such other rate authorized by this article.

“Debit balance account” for the purpose of this section means an account in which the benefits charged for all past years exceed the payments credited for such past years.

“Credit balance account” for the purposes of this section means an account in which the payments credited for all past years exceed the benefits charged for such past years.

Once a debit balance account rate is established for an employer's account for a year, it shall apply for the entire year.

“Due date” means the last day of the month next following a calendar quarter. In determining the amount in the fund on any due date, contributions received, but not benefits paid, for such month next following the end of a calendar quarter shall be included.
(b) Notwithstanding any other provision of this section, every debit balance employer subject to the provisions of this chapter, and any foreign corporation or business entity engaged in the construction trades which has not been an employer in the state of West Virginia for thirty-six consecutive months ending on the computation date, shall, in addition to any other tax provided for in this section, pay contributions at the rate of one percent surtax on wages paid by him with respect to employment for a period of eight years, beginning January first, one thousand nine hundred eighty-six.

(c) Effective June thirtieth, one thousand nine hundred eighty-five, and each computation date thereafter, the reserve balance of a debit balance employer shall be reduced to fifteen percent if such balance exceeds fifteen percent. The amount of noncredited tax shall be reduced by an amount equal to the eliminated charges. If the eliminated charges exceed the amount of noncredited tax, the noncredited tax shall be reduced to zero.

(d) On and after January first, one thousand nine hundred ninety-one, an employer's payment shall remain two and seven-tenths percent, until:

(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits; and

(2) The payments credited to the account for all past years exceed the benefits charged to the account by an amount equal to at least the percent of the average annual payroll as shown in Column B of Table III. The rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January first of a calendar year equal or exceed one and seventy-five one-hundredths percent but are less than two and twenty-five one-hundredths percent of gross covered wages for the twelve-month period ending on June
thirtieth of the preceding year, an employer's rate shall
be the amount appearing in Column D of Table III on
line with the percentage in Column B.

When the total assets of the fund as of January first
of a calendar year equal or exceed two and twenty-five
one-hundredths percent but are less than two and
seventy-five one-hundredths percent of gross covered
wages for the twelve-month period ending on June
thirtieth of the preceding year, an employer's rate shall
be the amount appearing in Column E of Table III on
line with the percentage in Column B.

When the total assets of the fund as of January first
of a calendar year equal or exceed two and seventy-five
one-hundredths percent but are less than three percent
of gross covered wages for the twelve-month period
ending on June thirtieth of the preceding year, an
employer's rate shall be the amount appearing in
Column F of Table III on line with the percentage in
Column B.

When the total assets of the fund as of January first
of a calendar year equal or exceed three percent of gross
covered wages for the twelve-month period ending on
June thirtieth of the preceding year, an employer's rate
shall be the amount appearing in Column G of Table III
on line with the percentage in Column B.

<table>
<thead>
<tr>
<th>Rate Class</th>
<th>Credits Exceed Charges</th>
<th>Employer's Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.0 to 6.0</td>
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</tr>
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</table>
(e) Notwithstanding any other provision of this section, all employers' rates for the calendar year beginning January first, one thousand nine hundred ninety, and ending on the thirty-first day of December, one thousand nine hundred ninety, shall be the amount in Column D of Table II on line with the percentage in Column B.

§21A-5.10a. Optional assessments on employers and employees.

(a) On and after the first day of July, one thousand nine hundred eighty-seven, if the commissioner determines for a given projected quarter that the rates established under the provisions of section ten of this article will not result in payments being made to the unemployment compensation fund in an amount sufficient to finance the payment of benefits during such quarter, the commissioner shall certify such fact to the governor, and the governor shall, by executive order, direct the commissioner to establish a level of assessment for employees and employers in accordance with the provisions of this section which is sufficient to prevent, to the extent possible, a deficit in the funds available to pay benefits to eligible individuals.

(b) Pursuant to such executive order, every employer, contributing and reimbursable, subject to this chapter, shall be required to withhold from all persons in his employment an assessment which shall be in an amount not to exceed fifteen one-hundredths (15/100) of one percent of an employee's gross wages, which amount, together with an assessment contributed by the employer in an amount as determined in accordance with the provisions of subsection (c) of this section, except for reimbursable employers who shall not be assessed, shall
be paid to the division of employment security on a form prescribed by the commissioner, at the same time and under the same conditions as the quarterly contribution payments required under the provisions of section seven, article five, chapter twenty-one-a of this code. The commissioner shall have the right to collect any delinquent assessments under this section in the same manner as provided for in section sixteen, article five, chapter twenty-one-a of this code; and in addition, any delinquency hereunder shall bear interest as set forth in section seventeen, article five, chapter twenty-one-a of this code.

(c) The commissioner shall establish the exact amounts of the employers' and employees' assessments at a level sufficient to generate the revenues needed to prevent a deficit which would otherwise result from the payment of benefits to eligible individuals, subject only to the limitation established in the preceding subsection (b) of this section. After determining the level of assessment on the gross wages of employees, the commissioner shall determine a rate of assessment to be imposed upon employers, except reimbursable employers, which rate shall be expressed as a percentage of wages as defined in section three, article one of this chapter, and which is sufficient to cause the total statewide assessment on such employers to equal the total statewide assessment imposed upon employees.

Notwithstanding any other provision of this section to the contrary, the solvency assessments on employers and employees established by this section hereby terminate on the first day of April, one thousand nine hundred ninety.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner, an individual shall be disqualified for benefits:

2 (1) For the week in which he left his most recent work voluntarily without good cause involving fault on the part of the employer and until the individual returns to
covered employment and has been employed in covered employment at least thirty working days.

For the purpose of this subdivision (1), an individual shall not be deemed to have left his most recent work voluntarily without good cause involving fault on the part of the employer, if such individual leaves his most recent work with an employer and if he in fact, within a fourteen-day calendar period, does return to employment with the last preceding employer with whom he was previously employed within the past year prior to his return to work day, and which last preceding employer, after having previously employed such individual for thirty working days or more, laid off such individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had such individual applied for such benefits. It is the intent of this paragraph to cause no disqualification for benefits for such an individual who complies with the foregoing set of requirements and conditions. Further, for the purpose of this subdivision, an individual shall not be deemed to have left his most recent work voluntarily without good cause involving fault on the part of the employer, if such individual was compelled to leave his work for his own health-related reasons and presents certification from a licensed physician that his work aggravated, worsened, or will worsen the individual's health problem.

(2) For the week in which he was discharged from his most recent work for misconduct and the six weeks immediately following such week; or for the week in which he was discharged from his last thirty-day employing unit for misconduct and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit. However, if the claimant returns to work in covered employment for thirty days during his benefit year, whether or not such days are consecutive, the maximum benefit amount shall be increased by the amount of the
decrease imposed under the disqualification; except that:

If he were discharged from his most recent work for one of the following reasons, or if he were discharged from his last thirty days employing unit for one of the following reasons: Misconduct consisting of willful destruction of his employer's property; assault upon the person of his employer or any employee of his employer; if such assault is committed at such individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work under the influence of any controlled substance, or being under the influence of any controlled substance while at work; arson, theft, larceny, fraud or embezzlement in connection with his work; or any other gross misconduct; he shall be and remain disqualified for benefits until he has thereafter worked for at least thirty days in covered employment: Provided, That for the purpose of this subdivision the words "any other gross misconduct" shall include, but not be limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from such act or acts.

(3) For the week in which he failed without good cause to apply for available, suitable work, accept suitable work when offered, or return to his customary self-employment when directed to do so by the commissioner, and for the four weeks which immediately follow for such additional period as any offer of suitable work shall continue open for his acceptance. Such disqualification shall carry a reduction in the maximum benefit amount equal to four times the individual's weekly benefit amount.

(4) For a week in which his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he was last employed, unless the commissioner is satisfied that he (1) was not participating, financing, or directly interested in such dispute, and (2) did not belong to a grade or class of workers who
were participating, financing or directly interested in
the labor dispute which resulted in the stoppage of
work. No disqualification under this subdivision shall be
imposed if the employees are required to accept wages,
hours or conditions of employment substantially less
favorable than those prevailing for similar work in the
locality, or if employees are denied the right of collective
bargaining under generally prevailing conditions, or if
an employer shuts down his plant or operation or
dismisses his employees in order to force wage reduc-
tion, changes in hours or working conditions.

For the purpose of this subdivision, if any stoppage
of work continues longer than four weeks after the
termination of the labor dispute which caused stoppage
of work, there shall be a rebuttable presumption that
part of the stoppage of work which exists after said
period of four weeks after the termination of said labor
dispute did not exist because of said labor dispute; and
in such event the burden shall be upon the employer or
other interested party to show otherwise.

(5) For a week with respect to which he is receiving
or has received:

(a) Wages in lieu of notice;

(b) Compensation for temporary total disability under
the workers' compensation law of any state or under a
similar law of the United States; or

(c) Unemployment compensation benefits under the
laws of the United States or any other state.

(6) For the week in which an individual has voluntar-
ily quit employment to marry or to perform any marital,
parental or family duty, or to attend to his or her
personal business or affairs and until the individual
returns to covered employment and has been employed
in covered employment at least thirty working days.

(7) Benefits shall not be paid to any individual on the
basis of any services, substantially all of which consist
of participating in sports or athletic events or training
or preparing to so participate, for any week which
commences during the period between two successive
sport seasons (or similar periods) if such individual
performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(8) (a) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act): Provided, That any modifications to the provisions of section 3304(a)(14) of the federal unemployment tax act as provided by Public Law 94-566 which specify other conditions or other effective date than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the federal unemployment tax act shall be deemed applicable under the provisions of this section;

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits;

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

(9) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university or other educational institution, he is attending such school, college, university or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new
term or session thereof, and until the individual returns to covered employment.

(10) For each week in which he is unemployed because of his request, or that of his duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(11) For each week with respect to which he is receiving or has received benefits under Title II of the social security act or similar payments under any act of Congress and/or remuneration in the form of an annuity, pension or other retirement pay from a base period and/or chargeable employer or from any trust or fund contributed to by a base period and/or chargeable employer, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero) by the prorated weekly amount of said benefits, payments and/or remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next lowest multiple of one dollar: Provided, however, That there shall be no disqualification if in the individual’s base period there are no wages which were paid by the base period and/or chargeable employer paying such remuneration, or by a fund into which the employer has paid during said base period. Claimant may be required to certify as to whether or not he is receiving or has been receiving remuneration in the form of an annuity, pension or other retirement pay from a base period and/or chargeable employer or from a trust fund contributed to by a base period and/or chargeable employer.

(12) For each week in which and for fifty-two weeks thereafter, beginning with the date of the decision, if the commissioner finds such individual who within twenty-four calendar months immediately preceding such decision, has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this article: Provided, That disqualification under this subdivision shall not preclude prosecution under section seven, article ten of this chapter.
ARTICLE 8A. EMPLOYMENT SECURITY DEBT FUNDS.

§21A-8A-8. Assessments; dedication of assessments; commissioner's authority to adjust assessments.

(a) On and after the first day of July, one thousand nine hundred eighty-seven, every employer, contributing and reimbursable, subject to this chapter, shall be required to withhold from all persons in his employment an assessment which shall be in an amount not to exceed thirty-five one-hundredths (35/100) of one percent of said employee's gross wages, which amount, together with an assessment contributed by the employer in an amount as determined in accordance with the provisions of subsection (b) of this section, except for reimbursable employers who shall not be assessed, shall be paid to the division of employment security on a form prescribed by the commissioner, at the same time and under the same conditions as the quarterly contribution payments required under the provisions of section seven, article five, chapter twenty-one-a of this code. The commissioner shall have the right to collect any delinquent assessments under this section in the same manner as provided for in section sixteen, article five, chapter twenty-one-a of this code. The commissioner shall have the right to collect any delinquent assessments under this section in the same manner as provided for in section sixteen, article five, chapter twenty-one-a of this code; and in addition, any delinquency hereunder shall bear interest as set forth in section seventeen, article five, chapter twenty-one-a of this code.

(b) The commissioner shall establish the exact amounts of the employers' and employees' assessments at a level sufficient to generate the revenues needed to retire the bonds or notes issued pursuant to this article and to pay deferred interest owed to the federal government when due, subject only to the limitation established in the preceding subsection (a) of this section. After determining the level of assessment on the gross wages of employees, the commissioner shall determine a rate of assessment to be imposed upon employers, except reimbursable employers, which rate shall be expressed as a percentage of wages, as defined in section three, article one of this chapter, except that for purposes of this section such wages shall include all
of that part of the remuneration paid to an employee
that is less than twenty-one thousand dollars during any
calendar year, and which is sufficient to cause the total
statewide assessment on such employers to equal the
total statewide assessment imposed upon employees.

(c) The proceeds derived from the assessments pro-
vided for in this section shall be placed in the special
nonrevolving revenue funds established pursuant to the
provisions of section two of this article to be held by the
commissioner separate and apart from all other funds
and accounts created under this chapter and the funds,
and the interest derived therefrom, shall be pledged and utilized only for the repayment of bonds or
notes issued under the provisions of this article and the
payment of deferred interest owed to the federal
government as the same becomes due. At such time as
there are no longer any bonds, notes or other evidences
of indebtedness outstanding which are payable from the
special nonrevolving revenue funds, any remaining
balance in these special accounts shall be paid into the
unemployment compensation trust fund. The commis-
sioner may establish additional special accounts and
subaccounts with the employment security administra-
tion fund for the purpose of identifying more precisely
the sources of payments into and disbursements from
the employment security administration fund.

(d) Prior to the beginning of any quarter during
which bonds or notes authorized by this article will be
outstanding, the commissioner may adjust the amount
of the assessment set forth in subsection (a) of this
section; however, the amount is never to exceed thirty-
five one-hundredths (35/100) of one percent of each said
employee's gross wages. The assessment shall cease
when all the bonds or notes are repaid.

(e) Any employer or corporate officer if employer is
a corporation, who fails to remit to the division of
employment security the assessments provided for
under this section shall be guilty of a felony, and, upon
conviction, shall be punished by a fine of not less than
five thousand dollars nor more than ten thousand
1492 UNEMPLOYMENT COMPENSATION

ARTICLE 9. EMPLOYMENT SECURITY ADMINISTRATION FUND.


1 (1) There is hereby appropriated out of funds made available to this state under section 903 of the social security act, as amended, the sum of one million, two hundred eighty-nine thousand, eight hundred thirty-nine dollars, or so much thereof as may be necessary, to be used, for the purpose of property improvements and/or automation enhancements of the unemployment insurance or job service activities within the division of employment security.

2 (2) No part of the money hereby appropriated may be obligated after the expiration of the two-year period beginning on the date of enactment of this act.

3 (3) The amount obligated pursuant to this act during any twelve-month period beginning on the first day of July and ending on June thirtieth shall not exceed the amount by which (a) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act during such twelve-month period and the thirty-four preceding twelve-month periods exceeds (b) the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this state during such thirty-five twelve-month periods.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-7. False representations; penalties.

1 A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or attempt to obtain or increase a benefit, either for himself or
another, under this chapter, or under an employment
security law of any other state or of the federal
government for either of which jurisdictions this state
is acting as an agent, shall be guilty of a misdemeanor,
and, upon conviction, punished by a fine of not less than
one hundred dollars nor more than one thousand dollars,
or by imprisonment for not longer than thirty days, or
both, and by full repayment of all benefits so obtained
fraudulently. Each false statement or representation, or
failure to disclose a material fact, shall constitute a
separate offense.


A person who, by reason of nondisclosure or misre-
presentation, either by himself or another (irrespective
of whether such nondisclosure or misrepresentation was
known or fraudulent), has received a sum as a benefit
under this chapter, shall either have such sum deducted
from a future benefit payable to him or shall repay to
the commissioner the amount which he has received.
Collection shall be made in the same manner as
collection of past-due payments against employers as set
forth in section sixteen of article five of this chapter,
which specifically includes the institution of civil action
and collection procedures thereon enumerated in said
section: Provided, That such collection or deduction of
benefits shall be barred after the expiration of five
years, except for known or fraudulent nondisclosure or
misrepresentation which shall be barred after the
expiration of ten years, from the date of the filing of the
claim in connection with which such nondisclosure or
misrepresentation occurred.

§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.

(a) The commissioner may require an employing unit
to provide sworn or unsworn reports concerning:

(1) The number of individuals in its employ.
(2) Individually their hours of labor.
(3) Individually the rate and amount of wages.
(4) Such other information as is reasonably connected with the administration of this chapter.

(b) Information thus obtained shall not be published or be open to public inspection so as to reveal the identity of the employing unit or the individual.

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

(1) The United States department of agriculture;

(2) The state agency responsible for enforcement of the medicaid program under Title Nineteen of the social security act;

(3) The United States department of health and human services or any state or federal program operating and approved under Title One, Title Two, Title Ten, Title Fourteen or Title Sixteen of the social security act;

(4) Those agencies of state government responsible for economic and community development; secondary, post-secondary and vocational education; vocational rehabilitation, employment and training, including, but not limited to, the administration of the perkins act and the job training and partnership act;

(5) The tax division, but only for the purposes of collection and enforcement;

(6) The division of labor for purposes of enforcing the wage bond provisions of chapter twenty-one of this code;

(7) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(8) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim.

(d) The agencies or organizations which receive information under subsection (c) shall agree that such
information shall remain confidential so as not to reveal
the identity of the employing unit or the individual
consistent with the provisions of this chapter.

(e) The commissioner may, before furnishing any
information permitted under this section, require that
those who request the information shall reimburse the
division of employment security for any cost associated
therewith.

(f) The commissioner may refuse to provide any
information requested under this section if the agency
or organization making the request does not certify that
it will comply with the state and federal law protecting
the confidentiality of such information.

A person who violates the provisions of this section
shall be guilty of a misdemeanor, and, upon conviction,
shall be fined not less than twenty dollars nor more than
two hundred dollars, or imprisoned not longer than
ninety days, or both.

No action for slander or libel, either criminal or civil,
shall be predicated upon information furnished by any
employer or any employee to the commissioner in
connection with the administration of any of the
provisions of this chapter.

§21A-10-19. Disclosure of information to child support
agencies.

(1) The division of employment security shall disclose,
upon request, to officers or employees of any state or
local child support enforcement agency, to employees of
the secretary of health and human services, any wage
and benefit information with respect to an identified
individual which is contained in its records.

The term “state or local child support enforcement
agency” means any agency of a state or political
subdivision thereof operating pursuant to a plan
described in sections 453 and 454 of the social security
act, which has been approved by the secretary of health
and human services under Part D, Title IV of the social
security act.
14 (2) The requesting agency shall agree that such information is to be used only for the purpose of establishing and collecting child support obligations from, and locating, individuals owing such obligations which are being enforced pursuant to a plan described in sections 453 and 454 of the social security act which has been approved by the secretary of health and human services under Part D, Title IV of the social security act.

15 (3) The information shall not be released unless the requesting agency agrees to reimburse the costs involved for furnishing such information.

16 (4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed on improper disclosure shall apply to the use of such information by officers and employees of child support agencies.

CHAPTER 186
(S. B. 62—By Senators Dittmar and Heck)

[Passed March 6, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter twenty-nine 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 the commission on uniform state laws; and adding life members to the commission.

Be it enacted by the Legislature of West Virginia:

That article one-a, chapter twenty-nine 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 1A. COMMISSION ON UNIFORM STATE LAWS.

§29-1A-2a. Life members.

1 In addition to the commissioners appointed and
serving pursuant to other provisions of this article, any person who serves as a member of the commission for twenty years and because of such years of service is appointed by the national conference of commissioners on uniform state laws as a life member of such conference shall remain as an additional member of the commission, and shall have the same duties, responsibilities and privileges as any member of the commission appointed by the governor.

CHAPTER 187
(S. B. 615—Originating in the Committee on Government Organization)

[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transferring the administration of the department of veterans' affairs and veterans' council from the department of health and human resources to the department of public safety.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

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

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

* Clerk's Notes: §5F-2-1 was also amended by S. B. 147 (Chapter 66), which passed prior to this act.
(2) Records management and preservation advisory committee provided for in article eight, chapter five of this code;

(3) Public employees retirement system and board of trustees provided for in article ten, chapter five of this code;

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

(5) Department of finance and administration and council of finance and administration provided for in article one, chapter five-a of this code;

(6) Employee suggestion award board provided for in article one-a, chapter five-a of this code;

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

(8) Advisory commission to the information system services division in the department of finance and administration provided for in article seven, chapter five-a of this code;

(9) Teachers retirement system and teachers' retirement board provided for in article seven-a, chapter eighteen of this code;

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

(11) Department of personnel of the civil service system and the civil service commission provided for in article six, chapter twenty-nine of this code;

(12) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen and article six-a, chapter twenty-nine of this code;

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

(14) Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;
(15) Public legal services council provided for in article twenty-one, chapter twenty-nine of this code;

(16) Division of personnel which may be hereafter created by the Legislature; and

(17) The West Virginia ethics commission which may be hereafter created by the Legislature.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of commerce, labor and environmental resources:

(1) Forest management review commission provided for in article twenty-four, chapter five of this code;

(2) Department of commerce provided for in article one, chapter five-b of this code;

(3) Office of community and industrial development provided for in article two, chapter five-b of this code;

(4) Enterprise zone authority provided for in article two-b, chapter five-b of this code;

(5) Office of federal procurement assistance provided for in article two-c, chapter five-b of this code;

(6) Export development authority provided for in article three, chapter five-b of this code;

(7) Labor-management council provided for in article four, chapter five-b of this code;

(8) Industry and jobs development corporation provided for in article one, chapter five-c of this code;

(9) Public energy authority and board provided for in chapter five-d of this code;

(10) Air pollution control commission provided for in article twenty, chapter sixteen of this code;

(11) Resource recovery—solid waste disposal authority provided for in article twenty-six, chapter sixteen of this code;
(12) Division of forestry and forestry commission provided for in article one-a, chapter nineteen of this code;

(13) Department of natural resources and natural resources commission provided for in article one, chapter twenty of this code;

(14) Water resources board provided for in article five, chapter twenty of this code;

(15) Water development authority and board provided for in article five-c, chapter twenty of this code;

(16) Department of labor provided for in article one, chapter twenty-one of this code;

(17) Labor-management relations board provided for in article one-b, chapter twenty-one of this code;

(18) Public employees occupational safety and health advisory board provided for in article three-a, chapter twenty-one of this code;

(19) Minimum wage rate board provided for in article five-a, chapter twenty-one of this code;

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

(21) Department of energy provided for in article one, chapter twenty-two of this code;

(22) Reclamation board of review provided for in article four, chapter twenty-two of this code;

(23) Board of appeals provided for in article five, chapter twenty-two of this code;

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

(25) Shallow gas well review board provided for in article seven, chapter twenty-two of this code;

(26) Oil and gas conservation commission provided for in article eight, chapter twenty-two of this code;
(27) Board of miner training, education and certification provided for in article nine, chapter twenty-two of this code;

(28) Mine inspectors' examining board provided for in article eleven, chapter twenty-two of this code;

(29) Oil and gas inspectors' examining board provided for in article thirteen, chapter twenty-two of this code;

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

(31) Blennerhassett historical park commission provided for in article eight, chapter twenty-nine of this code;

(32) Tourist train and transportation board provided for in article twenty-four, chapter twenty-nine of this code;

(33) Economic development authority provided for in article fifteen, chapter thirty-one of this code;

(34) Board of members of the forest industries industrial foundation provided for in article sixteen, chapter thirty-one of this code;

(35) Department of banking provided for in article two, chapter thirty-one-a of this code;

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

(37) Consumer affairs advisory council provided for in article seven, chapter forty-six-a of this code; and

(38) Lending and credit rate board provided for in chapter forty-seven-a of this code.

(c) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of education and the arts:
(1) Library commission provided for in article one, chapter ten of this code;
(2) Educational broadcasting authority provided for in article five, chapter ten of this code;
(3) Board of regents provided for in article twenty-six, chapter eighteen of this code; and
(4) Department of culture and history, archives and history commission and commission on the arts provided for in article one, chapter twenty-nine of this code.

(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of health and human resources:

(1) Human rights commission provided for in article eleven, chapter five of this code;
(2) Department of human services provided for in article two, chapter nine of this code;
(3) Department of health and board of health provided for in article one, chapter sixteen of this code;
(4) Health care planning council provided for in article two-d, chapter sixteen of this code;
(5) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;
(6) Continuum of care board for the elderly, disabled and terminally ill provided for in article five-d, chapter sixteen of this code;
(7) Hospital finance authority provided for in article twenty-nine-a, chapter sixteen of this code;
(8) Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;
(9) Structural barriers compliance board provided for in article ten-f, chapter eighteen of this code;
(10) Department of employment security, state advisory council thereto and board of review provided for in chapter twenty-one-a of this code;

(11) Office of workers’ compensation commissioner, advisory board thereto and workers’ compensation appeal board provided for in chapter twenty-three of this code;

(12) Commission on aging provided for in article fourteen, chapter twenty-nine of this code;

(13) Commission on mental retardation and advisory committee thereto provided for in article fifteen, chapter twenty-nine of this code;

(14) Women’s commission provided for in article twenty, chapter twenty-nine of this code; and

(15) Commission on children and youth provided for in article six-c, chapter forty-nine of this code.

(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of public safety:

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

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

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

(4) Department of public safety and commission on drunk driving prevention provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and emergency services advisory council provided for in article five, chapter fifteen of this code;

(6) Sheriffs’ bureau provided for in article eight, chapter fifteen of this code;
(7) Department of corrections provided for in chapter twenty-five of this code;

(8) Fire commission and state fire administrator provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and prison authority provided for in article twenty, chapter thirty-one of this code;

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

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

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of tax and revenue:

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

(2) Appraisal control and review commission provided for in article one-a, chapter eleven of this code;

(3) Office of nonintoxicating beer commissioner provided for in article sixteen, chapter eleven of this code;

(4) Board of investments provided for in article six, chapter twelve of this code;

(5) Municipal bond commission provided for in article three, chapter thirteen of this code;

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

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

(8) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;
(9) Office of alcohol beverage control commissioner provided for in article two, chapter sixty of this code; and

(10) Division of professional and occupational licenses which may be hereafter created by the Legislature.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of transportation:

(1) Road commission provided for in article two, chapter seventeen of this code;

(2) Department of highways provided for in article two-a, chapter seventeen of this code;

(3) Turnpike commission provided for in article sixteen-a, chapter seventeen of this code;

(4) Department of motor vehicles provided for in article two, chapter seventeen-a of this code;

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

(6) Motorcycle safety standards and specifications board provided for in article fifteen, chapter seventeen-c of this code;

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

(8) Railroad maintenance authority provided for in article eighteen, chapter twenty-nine of this code; and

(9) Port authority which may be hereafter created by the Legislature.

(h) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency shall not be affected by the enactment of this chapter.

(i) Except for such powers, authority and duties as
have been delegated to the secretaries of the departments by the provisions of section two of this article, the
existence, powers, authority and duties of boards and the membership, terms and qualifications of members
of such boards shall not be affected by the enactment of this chapter, and all boards which are appellate bodies or were otherwise established to be independent decision-makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(j) Wherever elsewhere in this code, in any act, in general or other law, in any rule or regulation, or in any ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read, construed and understood to mean a division of the appropriate department so created, and any such reference elsewhere to a division of a department so transferred and incorporated shall henceforth be read, construed and understood to mean a section of the appropriate division of the department so created.

(k) The crime victims compensation fund provided for in article two-a, chapter fourteen of this code, including all of the allied, advisory, affiliated or related entities and funds associated therewith is hereby transferred to and incorporated in and shall be administered as a part of the court of claims.

(l) The department of veterans' affairs and veterans' council provided for in article one, chapter nine-a of this code, including all of the allied, advisory, affiliated or related entities and funds associated therewith is hereby transferred to and incorporated in and shall be administered as a part of the department of public safety.

CHAPTER 188

(H. B. 4769—By Mr. Speaker, Mr. Chambers, and Delegate Houvouras)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter nine-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to state homes for veterans.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE HOMES FOR VETERANS.


In consultation with the governor and other appropriate state agencies, the division of veterans' affairs shall establish and maintain throughout the state a home or homes for qualified veterans. The present Soldiers Home at Weston State Hospital shall be reidentified as Veterans Unit of Weston State Hospital and continued as formerly constituted. As used in this article the term “qualified veteran” means a veteran as determined by the division of veterans' affairs, who: (a) Is ambulatory and is able to attend to his personal needs, dress himself and attend a general mess; (b) served on active duty in the armed forces of the United States of America or a nation allied therewith; and (c) was discharged or separated with an honorable discharge or with a general discharge under honorable conditions.

A veteran who meets conditions (b) and (c) but due to worsening conditions of health cannot meet condition (a), and therefore requires a higher level of health care, shall be deemed a qualified veteran.

Any individual enlisting for the first time on or after the eighth day of September, one thousand nine hundred eighty, who fails to complete at least twenty-four months of his enlistment is not eligible for any right, privilege or benefit for which eligibility is based on active duty in the armed forces. This provision does not apply when a person (a) is discharged because of hardship, (b) is retired or separated because of disability or (c) is later determined to have a service connected disability incurred during a completed period of enlistment.

In the event that a residential vacancy exists at any
31 veterans home or facility created and established pursuant to this article, a veteran who has been a resident of the state of West Virginia for one year or more prior to filing for admission shall be given preference in filling such residential vacancy over nonresident veterans.

CHAPTER 189

(Com. Sub. for S. B. 559—By Senators Jones, Heck, Burdette, Mr. President, Brackenrich, Craigo, Dittmar, Blatnik, Chernenko, Tomblin, Jackson and Spears)

[Passed March 10, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-c, relating to creation of the West Virginia wayport authority; board of directors; members; officers; qualifications; terms; oath; compensation; quorum; delegation of power; executive director; purpose of authority; transportation development; definitions; powers and duties of authority; wayport revenue bonds; and special West Virginia wayport authority operations fund.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen 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-c, to read as follows:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16C. WAYPORT AUTHORITY.

§17-16C-1. Creation of authority.
§17-16C-2. Board of directors; members; officers; qualifications; terms; oath; compensation; quorum and delegation of power.
§17-16C-3. Executive director.
§17-16C-4. Purposes of authority; transportation development.
§17-16C-5. Definitions.
§17-16C-6. Powers and duties of authority.
§17-16C-7. Wayport revenue bonds—Generally.
§17-16C-1. Creation of authority.

The West Virginia Wayport Authority is hereby created and shall be under the supervision of the secretary of transportation pursuant to the provisions of chapter five-f of this code.

§17-16C-2. Board of directors; members; officers; qualifications; terms; oath; compensation; quorum and delegation of power.

(a) The governing and administrative powers of the authority shall be vested in a board of directors consisting of seven members, including the transportation secretary, or his or her designee, who shall serve as the chairman of the wayport authority, and six individuals shall be appointed by the governor with the advice and consent of the Senate: Provided, That no more than four members shall be members of the same political party.

All directors of the authority shall be residents of the state of West Virginia.

The directors shall annually elect one of their members as vice chairman, one as secretary and one as treasurer. The board may elect such other officers from its membership or from its staff as it deems proper, and prescribe their powers and duties. Appointments to fill a vacancy of one of the appointed members shall be made in the same manner as the original appointment.

(b) All appointed members of the board shall be from the private sector, with one member of the board from each congressional district of the state as of the effective date of this article, and shall represent the public interest generally. At least one member may be
appointed that has recognized ability and practical
experience in transportation. At least one member may
be appointed that has recognized ability and practical
experience in banking and finance. At least one member
may be appointed that has recognized ability and
practical experience in accounting.

(c) The governor shall appoint two members of the
board whose terms shall expire on the first day of July,
one thousand nine hundred ninety-one; two members of
the board whose term shall expire on the first day of
July, one thousand nine hundred ninety-two; two
members of the board whose term shall expire on the
first day of July, one thousand nine hundred ninety-
three. Their respective successors shall be appointed for
terms of three years from the first day of July of the
year of appointment. Each member shall serve until his
successor is appointed and qualified.

(d) Each director, before entering upon the duties of
the board, shall take and subscribe to the oath or
affirmation required by the West Virginia constitution.
A record of each such oath or affirmation shall be filed
in the office of the secretary of state.

(e) Members of the board shall not be entitled to
compensation for their services but shall be reimbursed
for all necessary expenses actually incurred in connec-
tion with the performance of their duties as members.

(f) Four members of the board shall constitute a
quorum and the affirmative vote of the majority of
members present at a meeting of the board shall be
necessary and sufficient for any action taken by the
board, except that the affirmative vote of at least four
members is required for the approval of any resolution
authorizing the issuance of any wayport bonds pursuant
to this article.

(g) No vacancy in the membership or the board
impairs the right of a quorum to exercise all rights and
perform all duties of the board. Any action taken by the
board may be authorized by resolution at any regular
or special meeting and shall take effect upon the date
the chairman certifies the action of the authority by
affixing his or her signature to the resolution unless some other date is otherwise provided in the resolution.

(h) The board may delegate to one or more of its members or to its officials, agents or employees such powers and duties as it may deem proper.

§17-16C-3. Executive director.

1 The executive director of the West Virginia Public Port Authority shall serve as the executive director of the wayport authority pursuant to article sixteen-b of this chapter.

17-16C-4. Purposes of authority; transportation development.

1 The Legislature finds that the state of West Virginia must look to new opportunities to expand and diversify its economy; that there exists a continuing need for gainful employment for the citizens of this state and that innovative concepts must be explored in order for the state of West Virginia to maintain our competitive edge with the rest of the world.

8 The Legislature further finds that transportation is about to enter a new era. The Legislature finds that to ensure our global competitiveness, to successfully provide for the demands of our domestic economy, to maintain our military defense readiness, our transportation system must be renewed with the future in mind.

14 The Legislature further finds that America's unity and vitality are inextricably entwined with the growth of transportation. The Legislature finds that annual expenditures for transportation products and services in the United States total nearly eight hundred billion dollars and therefore, that growth and demand for transportation services parallels economic activity.

21 The Legislature further finds that as the national economy grows, so will the demand for transportation services and transportation-related products. The Legislature finds that higher levels of economic activity will mean more jobs, more goods to be shipped, higher incomes and greater demand for travel. The Legislature finds that continuation of this trend will affect the total
demand for freight transportation and alter the pattern
demand for freight transportation and alter the pattern
of commodity movements.

The Legislature further finds that one of the new,
innovative proposals being investigated is the creation
of wayports. The Legislature finds that if it is to keep
and attract industry, it should explore the concept of the
wayport, that is an airport located in a rural area, used
primarily as a location at which passengers and cargo
may be transferred between connecting flights of air
 carriers engaged in commerce. The Legislature finds
that there exists substantial economic benefits to new
airports: Economic activity attracts growth industry to
the area; the property values increase; transportation
centers develop and businesses will go where they can
go in an efficient manner.

The Legislature further finds that Congress has
introduced two bills that “provide for the establishment
of a revolving loan fund for the development of wayports
and to establish a commission to propose areas suitable
for the locations of such wayports”. The Legislature
finds that these bills allow for the creation of a wayport
revolving loan fund, with authorization of appropria-
tions from unobligated amounts in the airport and
airway trust fund.

The Legislature further finds that it would be to the
benefit of the people and the state of West Virginia to
pursue the opportunity of identifying potential sites for
a wayport designation. The Legislature finds that the
creation of a West Virginia Wayport Authority could
assist and develop in the application and location of a
wayport in West Virginia.

The Legislature further finds that it is a corollary
purpose of the wayport authority to coordinate and
cooperate with the public port authority to keep and
attract industry, to provide for a modern and efficient
transportation infrastructure that will allow and
facilitate business to compete on a regional, national and
international basis.
§17-16C-5. Definitions.

1 As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:
2
3 (a) The word "authority" means the West Virginia Wayport Authority as created by section one of this article.
4
5 (b) The words "operation fund" means the special West Virginia Wayport Authority operation fund as created by section seven of this article.
6
7 (c) The word "wayport" means an airport used primarily as a location at which passengers and cargo may be transferred between connecting flights of air carriers engaged in air commerce; but also allows passengers to initiate and terminate flights, and shipments of cargo to originate and terminate at said airport or similar type facility.
8
9 (d) The words "wayport development" means any activities which are undertaken with respect to a wayport by a wayport authority.

§17-16C-6. Powers and duties of authority.

1 The authority is granted the following powers and duties:
2
3 (1) The authority is hereby designated and empowered to act on behalf of the state on submitting a siting proposal for a wayport.
4
5 (2) The authority is empowered to take all steps appropriate and necessary to effect siting, development, and operation of a wayport within the state.
6
7 (3) To adopt bylaws for the regulations of its affairs and the conduct of its business.
8
9 (4) To adopt an official seal and alter the same at pleasure.
10
11 (5) To maintain an office at such place or places within the state as it may designate.
12
13 (6) The powers of a body corporate, including the power to sue and be sued.
(7) To construct, reconstruct, improve, maintain, repair and operate infrastructure projects at the designated wayport site as determined by the wayport authority.

(8) To enter into agreements, contracts or other transactions with any federal, state, county, municipal agency or private entity.

(9) To receive and accept from any federal agency grants for or in aid of the construction of any project, and to receive and accept aid or contributions from any sources of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made.

(10) The wayport authority is authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, any land, property, rights, rights-of-way, franchises, easements and other interests in lands as it may deem necessary or convenient for the construction or operation of any project upon such terms and at such price as may be considered by it to be reasonable and to take title in the name of the state; and for the purpose of acquiring any lands, rights or easements deemed necessary or incidental for the purposes of the wayport authority, the authority has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns, and other municipal corporations.

(11) If the state is selected as a site for a wayport, the authority is hereby designated and empowered to act on behalf of the state and to represent the state in the planning, financing, development, construction and operation of the project or any facility related to the project, with the concurrence of the affected public agency. Other state agencies and local governmental entities in this state, including the West Virginia housing development fund, shall cooperate to the fullest extent the authority deems appropriate to effectuate the
duties of the authority. If requested to do so by the
authority, the West Virginia housing development fund
shall, subject to the provisions of article eighteen,
chapter thirty-one of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, includ-
ing without limitation the approval of its board of
directors, issue or use its best efforts to issue, either in
its own name or on behalf of the authority, such bonds
and notes as may be required to finance the planning,
development, construction and operation of a project or
any facility related to a project. In the event such bonds
or notes are issued by the West Virginia housing
development fund, the authority shall enter into all such
agreements as the West Virginia housing development
fund may determine are necessary to pledge revenues
from projects or other funds of the authority sufficient
to pay such bonds and notes and to pay all related fees,
costs and expenses.

(12) The authority shall initiate meetings with local
and area wayport committees in the development of a
possible wayport site designation. The authority shall
seek coordination, cooperation, and feasibility studies
from local and area wayport committees.

(13) The authority shall take affirmative steps to
coordinate freely all aspects of the submission of a siting
proposal for the wayport project, and if the state is
selected as a site, to coordinate fully the development of
the project or any facility related to the project with the
federal government agency.

(14) To do any and all things necessary to carry out
and accomplish the purposes of this article, including
issuing wayport revenue bonds or requesting other
appropriate state agencies to issue and administer
wayport revenue bonds to finance wayport projects.

§17-16C-7. Wayport revenue bonds—Generally.

The wayport authority is hereby authorized to provide
by resolution at one time or from time to time, for the
issuance of wayport revenue bonds of the state for the
purpose of paying all or any part of the cost of one or
more wayport projects. The principal of and the interest
on such bonds shall be payable solely from the funds
herein provided for such payment. The bonds of each
issue shall be dated, shall bear interest at such rate or
rates as may be determined by the authority in its sole
discretion, shall mature at such time or times not
exceeding forty years from their date or dates, as may
be determined by the authority, and may be made
redeemable before maturity, at the option of the
wayport authority, at such price or prices and under
such terms and conditions as may be fixed by the
wayport authority prior to the issuance of the bonds. The
wayport authority shall determine the form of the
bonds, including any interest coupons to be attached
thereto, and shall fix the denomination or denominations
of the bonds and the place or places of payment of
principal and interest, which may be at any bank or
trust company within or without the state. The bonds
shall be executed by manual or facsimile signature by
the governor and by the chairman of the wayport
authority, and the official seal of the wayport authority
shall be affixed to or printed on each bond, and attested,
manually or by facsimile signature, by the secretary of
the wayport authority, and any coupons attached to any
bond shall bear the manual or facsimile signature of the
chairman of the wayport authority. In case any officer
whose signature or a facsimile of whose signature
appears on any bonds or coupons shall cease to be such
officer before the delivery of such bonds, such signature
or facsimile shall nevertheless be valid and sufficient for
all purposes the same as if he had remained in office
until such delivery; and, in case the seal of the wayport
authority has been changed after a facsimile has been
imprinted on such bonds, such facsimile seal will
continue to be sufficient for all purposes. All bonds
issued under the provisions of this article shall have and
are hereby declared to have all the qualities and
incidents of negotiable instruments under the negotiable
instruments law of the state. The bonds may be issued
in coupon or in registered form, or both, as the wayport
authority may determine, and provision may be made
for the registration of any coupon bonds as to principal
alone and also as to both principal and interest, and for
the reconversion into coupon bonds of any bonds registered as to both principal and interest. The wayport authority may sell such bonds in such manner, either at public or at private sale, and for such price as it may determine to be in the best interests of the state.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the wayport authority project or projects for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the wayport authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional wayport bonds may in like manner be used to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed the cost of the project or projects for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the wayport authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The wayport authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the state, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article.
§17-16C-8. Wayport revenue bonds—Trust agreements.

1. In the discretion of the wayport authority any wayport bonds issued under the provisions of this article may be secured by a trust agreement by and between the wayport authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Any such trust agreement may pledge or assign the tolls, rents, fees, charges and other revenues to be received, but shall not convey or mortgage any project or any part thereof.

2. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the wayport authority in relation to the acquisition of property and the construction, reconstruction, improvement, maintenance, repair, operation and insurance of the project or projects in connection with which such bonds shall have been authorized, and the custody, safeguarding and application of all moneys, and provisions for the employment of consulting engineers in connection with the construction or operation of such project or projects. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the wayport authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements securing bonds and debentures of corporations. In addition to the foregoing, any such trust agreement may contain such other provisions as the wayport authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the project or projects to which the trust agreement applies.
§17-16C-9. Tolls, rents, fees, charges and revenues.

1 (a) The wayport authority is hereby authorized to fix, revise, charge and collect tolls for the use of each wayport project and the different parts or sections thereof, and to fix, revise, charge and collect rents, fees, charges and other revenues, of whatever kind or character, for the use of each economic development project or tourism project, or any part or section thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon telephone, telegraph, electric light, power or other utility lines, gas stations, garages, stores, hotels, restaurants and advertising signs, or for any other purpose, and to fix the terms, conditions, rents and rates of charges for such use. Such tolls, rents, fees and charges shall be so fixed and adjusted in respect of the aggregate of tolls, or in respect of the aggregate rents, fees and charges, from the project or projects in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay (A) the cost of maintaining, repairing and operating such project or projects and (B) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls, rents, fees and other charges shall not be subject to supervision or regulation by any other commission, board, bureau, department or agency of the state. The tolls, rents, fees, charges and all other revenues derived from the project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of (1) the interest upon such bonds as such interest shall fall.
due, (2) the principal of such bonds 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 bonds retired by call 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 resolution authorizing the issuance of such wayport bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. The moneys in the sinking fund, less such reserve as may be provided in such resolution or trust agreement, if not used within a reasonable time for the purchase of bonds for cancellation as above provided, shall be applied to the redemption of bonds at the redemption price then applicable.

§17-16C-10. Trust funds.

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this article. The resolution authorizing the issuance of bonds of any issue of the trust agreement securing such bonds shall provide that any officer to whom, or any bank or trust company to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this article and such resolution or trust agreement may provide.

§17-16C-11. Remedies.

Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or
the resolution authorizing the issuance of such bonds,
and may enforce and compel the performance of all
duties required by this article or by such trust agree-
ment or resolution to be performed by the wayport
authority or by any officer thereof, including the fixing,
charging and collecting of tolls, rents, fees and charges.

§17-16C-12. Exemption from taxes.

(a) The exercise of the powers granted by this article
will be in all respects for the benefit of the people of
the state, for the increase of their commerce and
prosperity, and for the improvement of their health and
living conditions, and as the operation and maintenance
of projects by the wayport authority will constitute the
performance of essential governmental functions, the
wayport authority shall not be required to pay any taxes
or assessments upon any project or any property
acquired or used by the wayport authority under the
provisions of this article or upon the income therefrom,
and the bonds issued under the provisions of this article,
their transfer and the income therefrom (including any
profit made on the sale thereof) shall at all times be free
from taxation within the state.

(b) In lieu of payment by the wayport authority of
county property taxes and other assessments on facilities
owned by it, or upon any facility which is leased to any
private person, corporation, or entity, the wayport
authority shall make an annual payment as provided
herein to the county commission of such county. Any
wayport authority project which is leased and is exempt
from taxation shall be subject to a payment in lieu of
taxes. Said payment shall be made to the county
commission of the county in which the project is located
and shall be in an amount equal to the property taxes
otherwise payable. The county commission receiving
such in lieu of payment shall distribute such payment
to the different levying bodies in that county in the same
manner as are property taxes. Nothing contained herein
may be construed to prohibit the wayport authority
from collecting such in lieu of payment from any private
party by contract or otherwise.
§17-16C-13. Preliminary expenses.

The secretary of transportation is hereby authorized, in his or her discretion, to expend out of any funds available for the purpose, such moneys as may be necessary for the study of any wayport economic development or tourism project or projects and to use the division of highway's engineering and other forces, including consulting engineers and traffic engineers, for the purpose of effecting such study and to pay for such additional engineering and traffic and other expert studies as he may deem expedient; and all such expenses incurred by the state department of transportation and the state division of highways prior to the issuance of wayport revenue bonds or revenue refunding bonds under the provisions of this article shall be paid by the state division of highways or the state department of transportation and charged to the appropriate project or projects, and the state division of highways and the state department of transportation shall keep proper records and accounts showing each amount so charged. Upon the sale of wayport revenue bonds or revenue refunding bonds for any wayport project or projects, the funds so expended by the state division of highways or the state department of transportation in connection with such project or projects shall be reimbursed to the state division of highways and the state department of transportation from the proceeds of such bonds.

§17-16C-14. Wayport revenue refunding bonds—Generally.

The wayport authority is hereby authorized to provide by resolution for the issuance of wayport revenue refunding bonds of the state for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds; and if deemed advisable by the wayport authority, for the additional purpose of constructing improvements, extensions or enlargements of the project
or projects in connection with which the bonds to be refunded shall have been issued.

The wayport authority is further authorized to provide by resolution for the issuance of wayport refunding revenue bonds of the state for the combined purpose of two or more of the following: (a) Refunding any wayport bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and (b) paying all or any part of the cost of any additional wayport project or projects.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the wayport authority in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable.

§17-16C-15. Special West Virginia Wayport Authority operations fund.

There is hereby established a special West Virginia Wayport Authority operations fund which shall operate as a special revolving fund. All proceeds and revenues of the authority shall be credited to the fund by the state treasurer on a monthly basis. At the end of each fiscal year, any unexpended funds in this account shall be reappropriated and available for expenditure for the subsequent fiscal year: Provided, That no funds shall be appropriated from the general revenue fund of the state of West Virginia for the operation of the authority.

§17-16C-16. Severability.

If any part or provision of this article be held to be unconstitutional by any court of competent jurisdiction, such holding and decision of the court shall not affect the validity and constitutionality of the remaining parts and provisions of this article, and to this end the parts and provisions of this article are declared to be severable.
CHAPTER 190
(S. B. 14—By Senators Spears, Brackenrich and J. Manchin)

[Passed January 29, 1990; in effect July 1, 1990. 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, relating to continuing the women's commission and correcting designation of ex officio members.

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. Creation; 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 created within the office of the governor the West Virginia women’s commission, to consist of seventeen members, six 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 human services, the director of the human rights commission and the director of the division of personnel.

Each ex officio member may designate one representative employed by his department to meet with the commission in his 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
predecessor was appointed shall be appointed for the
remainder of such term. Each member shall serve until
the appointment and qualification of his successor.

No member may receive any salary for his services,
but each may be reimbursed for actual and necessary
expenses incurred by him in the performance of his
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.

Pursuant to 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, one thousand nine hundred ninety-one, to allow for
the completion of an audit by the joint committee on
government operations.

CHAPTER 191
(S. B. 89—By Senators Brackenrich and Spears)

[Passed March 9, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one,
chapter twenty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to continuing the office of workers' compensation
commissioner.

Be it enacted by the Legislature of West Virginia:

That section one, article one, 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:
§23-1-1. Workers' compensation commissioner; appointment; term; oath; bond; conflict of interest; compensation; official seal; legal services; references to director deemed to mean commissioner; references to workmen's compensation deemed to mean workers' compensation.

There shall be a state workers' compensation commissioner who shall be appointed by the governor by and with the advice and consent of the Senate and who shall serve at the will and pleasure of the governor during the term for which the governor was elected and until the commissioner's successor has been appointed and qualified. An appointment may be made to fill a vacancy or otherwise when the Senate is not in session, but shall be acted upon at the next session thereof. The person so appointed shall take the oath or affirmation prescribed by section five, article IV of the Constitution, and such oath shall be certified by the person who administers the same and shall be filed in the office of the secretary of state. The person so appointed shall give bond in the penalty of twenty-five thousand dollars conditioned for the faithful performance of the duties of this office, which bond shall be approved by the attorney general as to form, and by the governor as to sufficiency. The surety of such bond may be a bonding or surety company, in which case the premiums shall be paid out of the appropriation made for the administration of this chapter. The commissioner shall hold no position of trust or profit, or engage in any occupation or business, interfering or inconsistent with the duties as such commissioner. The commissioner shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words "West Virginia Compensation Commissioner" 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 compensation commissioner shall be equal to the original in evidence.
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, 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 represent 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.

Whenever in this chapter or elsewhere in law reference is made to "state director of workmen's compensation" or "compensation commissioner" such reference shall henceforth be construed and understood to mean "state workers' compensation commissioner".

Whenever in this chapter or elsewhere in law reference is made to the term "workmen's compensation" or reference is made to the "workmen's compensation advisory board", "workmen's compensation fund", "disabled workmen's relief fund" and "workmen's compensation appeal board," such references to and the titles of each such board or fund shall henceforth be construed to mean, and shall be defined to mean, respectively "workers' compensation", "workers' compensation advisory board", "workers' compensation fund", "disabled workers' relief fund" and "workers' compensation appeal board".

Pursuant to the provisions of section four, article ten, chapter four of this code, the office of workers' compensation commissioner shall continue to exist until the first day of July, one thousand nine hundred ninety-one, to allow for the completion of an audit by the joint committee on government operations.
CHAPTER 192
(Com. Sub. for S. B. 441—By Senators Brackenrich, Holliday and Rundle)

[Passed March 10, 1990; in effect from passage. Approved by the Governor.]

AN ACT to establish the Fayette County New River Gorge Bridge Day Commission to sanction and coordinate activities associated with the annual bridge day at the New River Gorge Bridge in Fayette County, to authorize the commission to license vendors and otherwise oversee bridge day activities, to require the promulgation of rules and regulations by the division of highways respecting the closing of certain highways during bridge day activities, and to limit the liability of the state and its political subdivisions respecting such activities.

Be it enacted by the Legislature of West Virginia:

FAYETTE COUNTY NEW RIVER GORGE BRIDGE DAY COMMISSION.

§1. Bridge day commission created; terms of members; vacancies.
§2. Office space and staff support; officers; meeting; reimbursement for expenses.
§3. Commission powers; rules and regulations promulgated by the county commission.
§4. Restriction on use of public highways.
§5. Limitation of liability.

§1. Bridge day commission created; terms of members; vacancies.

(a) The Fayette County New River Gorge Bridge Day Commission is hereby created, which bridge day commission shall consist of six members who shall serve without compensation. The members shall be appointed by the county commission of Fayette County with one member representing each of the following: The county commission of Fayette County, the Fayette County chamber of commerce, the town of Fayetteville, the sheriff of Fayette County, the secretary of the department of transportation and the secretary of the department of public safety.
(b) The terms of office for the bridge day commission members first appointed shall be two years for two members, four years for two members and six years for two members, and the successor of each appointed member shall be appointed for a term of six years in the same manner as the original appointments were made, except that any person appointed by the county commission to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. Each bridge day commission member shall serve until the appointment of his or her successor.

§2. Office space and staff support; officers; meeting; reimbursement for expenses.

(a) The county commission of Fayette County shall supply the bridge day commission with such office space and staff support as may be necessary for the efficient conduct of the business of the bridge day commission.

(b) The county commission of Fayette County shall appoint a chairman of the bridge day commission. The bridge day commission shall then elect such other officers as it deems appropriate for the conduct of its business.

(c) The bridge day commission shall hold a regular monthly meeting on the day of each month as a majority of the members of the bridge day commission shall designate. Special meetings may be convened on the call of the chairman or a majority of the members. A majority of the members of the bridge day commission shall constitute a quorum for the conduct of business and a majority of the members present at a meeting shall be required to determine any issues brought before it.

(d) Each member of the bridge day commission shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a member of the commission. Requisition for such expenses shall be accompanied by a sworn and itemized statement which shall be filed with the county commission.
§3. Commission powers; rules and regulations promulgated by the county commission.

(a) The bridge day commission shall be and is hereby designated as the official public body to sanction and coordinate all bridge day activities in accordance with the rules and regulations promulgated by the county commission as hereinafter provided.

(b) The county commission of Fayette County shall promulgate rules and regulations governing the planning, implementation and oversight of bridge day activities by the bridge day commission, which rules and regulations shall include, but not necessarily be limited to, provisions:

. (1) Designated the third Saturday in October of each year, or any other day as may reasonably be recommended by the bridge day commission, as Bridge Day in Fayette County, which day shall be the official day for activities on and associated with the New River Gorge Bridge;

. (2) Requiring the licensure of all vendors desiring to conduct vending operations in conjunction with bridge day activities and the payment of a licensure fee therefor;

. (3) Requiring the timely application and approval by the bridge day commission of any activity or event in which any person, firm, organization, corporation or other entity desires to operate or participate in conjunction with bridge day activities;

. (4) Requiring the execution of a release of liability by all persons who participate in any such event or activity as set forth in subdivision (3) hereof;

. (5) Authorizing the imposition of a civil penalty not to exceed one thousand dollars or the denial of participation in any bridge day activities, or both, against any person, firm, organization, corporation, or other entity who fails to obtain a vendor's license or approval of an activity from the bridge day commission; and

. (6) Providing for the maintenance and use of all funds
received by the bridge day commission, whether received through private contributions, grants, donations, or licensing fees.

§4. Restriction on use of public highways.

1 The division of highways, in cooperation with the bridge day commission, shall promulgate rules and regulations governing the closure to motor vehicular traffic of the New River Gorge Bridge, parts of United States route nineteen and such other adjacent roadways as may be necessary for the proper and safe implementation of bridge day activities.

§5. Limitation of liability.

1 (a) The bridge day commission is hereby declared to be a political subdivision within the intent and meaning of section three, article twelve-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and as such, is subject to all the rights, privileges and immunities afforded such political subdivisions under the provisions of article twelve-a, chapter twenty-nine of said code.

1 (b) Any person who desires to base jump, parachute, rappel or otherwise participate in any similar activity on bridge day shall, prior to participation in such activity, execute a release of liability releasing the bridge day commission, the state of West Virginia and all of its political subdivisions from any liability associated with such activity, and the bridge day commission, the state of West Virginia and all other political subdivisions thereof, shall be immune from liability for any and all injuries suffered or damages sustained by any person engaging in such activities, notwithstanding that such release may not have been duly executed.

CHAPTER 193

(H. B. 4095—By Delegates Love and Pettit)

[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

AN ACT to repeal chapter one hundred fifty-one, acts of the Legislature, regular session, one thousand nine hundred
twenty-seven, relating to requiring the county commission of Hancock County to mark by suitable monuments or markers the frontier forts and block houses occupied by the early settlers during Indian wars, also graves of pioneers and soldiers; and care and upkeep of public cemeteries or burying grounds, where no charge was or is made for burying therein, wherein are buried the remains of pioneers, early settlers, soldiers and sailors, and authorizing said commission to lay a levy to carry out the purposes of this act.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of act requiring the county of Hancock to provide funds for certain monuments; marking certain graves; providing for a caretaker, bequests and endowments; providing a levy not to exceed two cents; and appointing a committee.

Chapter one hundred fifty-one, acts of the Legislature, regular session, one thousand nine hundred twenty-seven, as amended, is hereby repealed.

CHAPTER 194
(H. B. 4356—By Delegates Flanigan and Basham)
[Passed February 16, 1990; in effect from passage. Approved by the Governor.]

AN ACT to authorize the Mercer County commission to appoint a five-member tourist train authority to operate a pilot tourist train project and to exercise certain powers.

Be it enacted by the Legislature of West Virginia:

MERCER COUNTY TOURIST TRAIN AUTHORITY.

§1. Mercer County tourist train authority; powers and pilot project.

The Mercer County commission may establish a tourist train authority. The authority shall be composed of five members appointed by the county commission. Of the members appointed, at least two members shall have
had experience or involvement in the management or
maintenance of a railroad and at least one member shall
have had experience or involvement in the development
or management of a tourist attraction.

The authority shall have the responsibility for and
shall establish the pilot project to create a tourist train
network in the area involving routes between Bluefield,
Bramwell and Matoaka, West Virginia, and Pocahontas,
Virginia, as described in chapter one hundred fifty-
seven, acts of the Legislature, one thousand nine
hundred eighty-nine.

The authority may also:

(1) Sue and be sued, make contracts, and adopt and
use a common seal and alter the same as may be deemed
expedient;

(2) Acquire, purchase, install, lease, construct, own,
hold, operate, maintain, equip, use and control termi-
nals, buildings, roadways, rights-of-way, rails and
structures, equipment, facilities or improvements and
lease, install, construct, acquire, own, maintain, control
and use any and every kind or character of motive
powers and conveyances or appliances necessary or
proper to carry persons, goods, wares and merchandise
over, along, upon or through the railway system;

(3) Apply for and accept loans, grants or gifts of
money, property or service from any federal agency or
the state of West Virginia or any political subdivision
thereof or from any public or private sources available
for any and all of the purposes authorized in this article,
or imposed thereon by any such federal agency, the state
of West Virginia or any political subdivision thereof, or
any public or private lender or donor, and give eviden-
ces of indebtedness as may be required;

(4) Act as agent for the United States of America, or
any agency, department, corporation or instrumentality
thereof, in any manner coming within the purposes or
powers of the authority;

(5) Initiate preservation of railroad facilities, promote
economic development and tourism of a specific nature
in this state;
(6) Meet and cooperate with similar authorities or bodies of any of the several states contiguous with this state, whose purpose in their respective states is to establish an interstate or intermodal transportation network;

(7) Enter into agreements, contracts or other transactions with any federal, state, county, municipal agency or private entity;

(8) Report annually to the county commission by the first day of January of each year on the status of projects, operations, financial condition and other necessary information relating to the tourist train project;

(9) Enter into agreements or contracts with the West Virginia railroad maintenance authority for the preservation, operation and use of railroad lines;

(10) Assist and encourage the West Virginia railroad maintenance authority to purchase railroad tracks being abandoned by any common carrier, and to financially assist the railroad maintenance authority in making such purchase;

(11) Collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments and other evidence of indebtedness, and in connection with providing technical, consultive and project assistance services;

(12) Do any and all things necessary to carry out and accomplish the purposes of this act.

CHAPTER 195
(H. B. 4161—By Delegates Murphy and Mezzatesta)

[Passed February 5, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred seventy-eight, Acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended in chapter one hundred thirty-five, Acts of the Legislature, regular session, one thousand nine hundred
eighty-eight, relating to the composition of the board of directors of the Morgan County War Memorial Hospital and to permit the representatives of an entity which has entered a management contract or affiliation agreement with Morgan County War Memorial Hospital to occupy positions on the board of directors of the hospital.

Be it enacted by the Legislature of West Virginia:

WAR MEMORIAL HOSPITAL TO THE VETERANS OF THE WORLD WARS FROM MORGAN COUNTY.

§2. Board of Directors.

1 On the first day of July, one thousand nine hundred eighty-eight, the terms of all members of the board of directors of the Morgan County War Memorial Hospital shall expire. The board of directors of the Morgan County War Memorial Hospital shall be appointed by the Morgan County commission and shall be comprised of not less than five members, plus the president of the hospital medical staff, who shall be a voting member, and hospital administrator or superintendent, who shall be an ex officio member without voting authority. The members appointed by the commission shall serve for terms of three years from the first day of July following their appointment, except that effective the first day of July, one thousand nine hundred eighty-eight, one third of the members, or as close thereto as possible, shall be appointed for one year, one third of the members, or as close thereto as possible, for two years, and one third of the members, or as close thereto as possible, for three years. Thereafter, such members shall be appointed for regular three-year terms. The terms of the president of the hospital medical staff and the hospital administrator shall be concurrent with their appointment. No person shall be ineligible to appointment by reason of sex, political or religious affiliations. The board may act as its own treasurer. Vacancies in the board shall be reported to the county commission and filled by appointment in like manner as original appointments for the unexpired term. The county commission may remove any director for misconduct or neglect of duty.

No compensation shall be paid or allowed any director.
Notwithstanding any other provision of law, one or more representatives of an entity that has concluded a management contract or affiliation agreement with War Memorial Hospital may serve on the board of directors of the hospital so long as either the management contract or affiliation agreement is in effect or amounts under such contract or agreement are owed to the entity by War Memorial Hospital.

CHAPTER 196
(S. B. 551—By Senators Craigo and Dittmar)

[Passed March 9, 1990; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Putnam County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election to extend the additional county levy for parks, recreation and library services in Putnam County, from between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred ninety.

Be it enacted by the Legislature of West Virginia:

PUTNAM COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED TO CONTINUE ADDITIONAL LEVY FOR PARKS, RECREATION AND LIBRARY SERVICES.

§1. Extending time for Putnam County Commission to meet as levying body for election to continue additional levy for parks, recreation and library services.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Putnam County is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred ninety, for the purpose of
submitting to the voters of Putnam County the extension
for the additional county levy for parks, recreation and
library services in Putnam County.

CHAPTER 197
(S. B. 554—By Senators Craigo and Dittmar)

[Passed March 7, 1990; in effect from passage. Approved by the Governor.]

AN ACT directing the division of health and the farm
management commission to convey real property and
the improvements thereon to the city of Spencer;
requiring conditions in deeds.

Be it enacted by the Legislature of West Virginia:

SPENCER STATE HOSPITAL.

§1. Farm management commission and the division of
health directed to convey Spencer State Hospital
institutional farm and Spencer State Hospital to
the city of Spencer.

The Legislature hereby recognizes that unemploy-
ment is of serious concern to the people of the county
of Roane and the city of Spencer, that the problem of
unemployment has been exacerbated by the closing of
Spencer State Hospital, and that new economic oppor-
tunities may be developed by the city of Spencer
through the utilization of the Spencer State Hospital
institutional farm and the Spencer State Hospital
facility. Accordingly, the Legislature hereby finds and
declares that the transfer of the Spencer State Hospital
and the Spencer State Hospital institutional farm to the
city of Spencer located in Roane County promotes the
general welfare of the public and, therefore, is a public
purpose.

The farm management commission and the division of
health are hereby directed to transfer and convey unto
the city of Spencer certain plots or parcels of land
consisting of one hundred thirty-three acres more or less
and thirty-two acres more or less and the improvements
thereto known as the Spencer State Hospital institutional farm and Spencer State Hospital, being situate in Roane County, West Virginia.

The deed transferring the above described thirty-two acres of property shall contain a provision that the owner of the property shall provide the division of human services, or its successor, with office space without charge for a period of time to be designated in the deed.

Any proper conveyance made by the farm management commission and the division of health transferring ownership of the above described parcels to the city of Spencer shall contain a provision that ownership of such property shall revert to the state should the land or the improvements thereto cease to be used for purposes approved by the city of Spencer.
RESOLUTIONS

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 1
(By Delegate Murensky)
[Adopted January 10, 1990]

Raising a Joint Assembly to hear an address by His Excellency, the Governor.

WHEREAS, His Excellency, the Governor, has advised the committee to notify him that the Legislature has assembled and is ready to receive any communication he may desire to present, that he will be pleased to address a joint assembly of the Senate and House of Delegates at the convenience of the two houses; therefore, be it

Resolved by the Legislature of West Virginia:

That His Excellency, the Governor, be hereby invited to address a Joint Assembly of the Legislature at 7:00 o'clock post meridian the 10th day of January, 1990; and, be it

Further Resolved, That the President of the Senate and the Speaker of the House of Delegates appoint three members of each of the respective houses of the Legislature as a committee to wait upon His Excellency, the Governor, and escort him into the hall of the House of Delegates at the time herein appointed for hearing the address.

HOUSE CONCURRENT RESOLUTION 21
(By Mr. Speaker (Mr. Chambers), Delegates Queen, Minard, Ashcraft, Warner, Kelly, Givens, Whitman, Dalton, Martin, Rutledge, Spencer, Williams, Given, Richards, C. Starcher, Damron, Ryan, Fantasia, Leggett, Schoonover, Farley, Clonch, R. Burk, Kiss, M. Miller, Reid, T. Hatfield, Cerra, Louderback, Phillips, Ferrell, Farmer, Pethtel, Schadler, Morgan, Grubb, Cole, White, Moore, Pitrolo, Mezzatesta, D. Cook, Shepherd, Peddicord, S. Cook, Prezioso, Pettit, Roop, Susman, Love, Michael, Adkins, Tribett, Blake, Manuel, Basham, Anderson, Rowe, Flanigan, Bird, Katz, McKinley, Riggs, Otte, Stemple, Conley, Overington, Merow and Murensky)
[Adopted February 23, 1990]

Urging the West Virginia Congressional Delegation to continue its efforts to have the Federal Bureau of
Investigation relocate its Identification Division to West Virginia and urging the Governor of West Virginia to assist the delegation in its efforts.

WHEREAS, The Federal Bureau of Investigation is considering relocating its Identification Division employing approximately two thousand; and

WHEREAS, Several West Virginia cities are being considered as potential sites for relocation of the Identification Division; and

WHEREAS, West Virginia has many distinct advantages such as way of life, low cost of living, an outstanding higher education system, a dedicated work force and many other advantages and opportunities; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of West Virginia fully supports the efforts of the Congressional Delegation to have the Federal Bureau of Investigation locate its Identification Division in West Virginia, pledges its support in this endeavor and urges the Governor to assist the delegation in its efforts; and, be it

Further Resolved, That the Clerk of the House of Delegates be directed to forward a copy of this resolution to the West Virginia Congressional Delegation and the Governor of West Virginia.

HOUSE CONCURRENT RESOLUTION 40
(By Mr. Speaker (Mr. Chambers) and Delegate Grubb)

[Adopted March 10, 1990]

Requesting the Joint Committee on Government and Finance to establish an interim committee to review, examine and study matters related to solid and toxic waste management.

WHEREAS, Problems involving the proper management of solid and toxic waste continue to impact the public health, welfare and safety; and

WHEREAS, The Legislature has taken important steps in recent years to address these problems; and

WHEREAS, The public policy of the State of West Virginia
RESOLUTIONS 1541

calls for the reduction of the solid waste stream by twenty percent in the year ending the thirty-first day of December, one thousand nine hundred ninety-four, and thirty percent in the year ending the thirty-first day of December, two thousand; and

WHEREAS, Pursuant to law the director of the division of administration filed a report on the thirty-first day of January, one thousand nine hundred ninety, relating to establishment of a state procurement program for recycled paper products; and

WHEREAS, Source reduction of solid and toxic waste should be considered the highest priority in the management hierarchy for such waste; and

WHEREAS, The development of markets for recycled products is essential to the implementation of effective recycling programs; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to establish an interim committee to review, examine and study potential source reduction strategies for solid and toxic waste, market development and governmental procurement programs for recycled products, and the overall status of our state and county programs designed to manage and dispose of solid waste; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, one thousand nine hundred ninety-one, on its findings, conclusions, and recommendations, together with a draft of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION 19
(By Senators Holliday and Pritt)
(Adopted March 10, 1990)

Establishing a West Virginia health care delivery and
accessibility task force and directing said task force to report to the Legislature.

WHEREAS, There are 300,797 people in West Virginia without any health care insurance and no financial ability to seek health care when it is necessary; and

WHEREAS, The number of West Virginians who do not have adequate access to quality and timely health care is much greater than the 300,797 figure due to the fact that many people who are insured are not able to afford health insurance that adequately meets their real needs; and

WHEREAS, Among the uninsured in West Virginia are 96,300 children who are forced to go without adequate health care during the most important growth years of their lives; and

WHEREAS, Nearly half of all those who have no medical insurance are actively employed workers whose incomes are too inadequate to meet their health care needs; and

WHEREAS, The number of state residents decreased by 30,000 from 1980 to 1989, but the number of state residents without health insurance increased by 30,000; and

WHEREAS, The depth of the health care problem in West Virginia, in all likelihood, will worsen during the next decade to a point of crisis by the turn of the century; and

WHEREAS, These statistics represent the horrible legacy of a failed health care delivery system, the needless pain and suffering of our sister and brother West Virginians, and an unacceptable waste of human and financial resources in our state; therefore, be it

Resolved by the Legislature of West Virginia:

That a task force be established by this Legislature for the purpose of studying the issue of access to health care in West Virginia, such task force to be composed of the chair and four members of the House Health and Human Resources Committee, to be chosen by the Speaker of the House; the chair and four members of the Senate Health and Human Resources Committee, chosen by the President of the Senate; eight members from the public appointed by the Governor, who shall include representatives from labor; consumers; providers, one of which must be a certified advanced practice nurse;
community organizations with an interest in the subject; and one representative from the Division of Health and one representative from the Division of Human Resources of the West Virginia Department of Health and Human Resources; and, be it

Further Resolved, That this task force shall meet as necessary, including during interim committee meetings of the Legislature, and shall investigate all relevant issues related to health care delivery and accessibility; and, be it

Further Resolved, That the task force shall hold public hearings for the purpose of receiving comments on these issues; and, be it

Further Resolved, That the task force shall recommend options for providing adequate and accessible health care to all West Virginians; and, be it

Further Resolved, That such options, findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate such recommendations, shall be reported by the task force to the next regular session of the Legislature, 1991; and, be it

Further Resolved, That the expenses necessary to conduct this work of the task force be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION 30
(Originating in the Committee on Finance)
[Adopted March 1, 1990]

Relating to approving the purpose and amount of certain projects of the West Virginia Regional Jail and Correctional Facilities Authority.

Whereas, The West Virginia Supreme Court of Appeals, in the matter of Crain v. Bordenkircher, 376 S.E.2d 141, on November 30, 1988 (the "November 1988 Order"), ruled that the West Virginia Penitentiary located at Moundsville must be closed before July 1, 1992, and a new facility must be constructed to eliminate unconstitutional conditions of confinement; and

Whereas, The West Virginia Supreme Court of Appeals, in
its November 1988 Order, made the Governor, Secretary of State, Attorney General, Treasurer, members of the State Building Commission, President of the State Senate and all members of the State Senate, Speaker of the House of Delegates and all members of the House of Delegates, Auditor and Commissioner of the Department of Administration parties to the November 1988 Order, individually and in their official capacities; and

WHEREAS, Nine county jails have been closed as a result of court actions or the extreme costs associated with the upgrading of the facilities to meet modern standards for conditions of confinement; and

WHEREAS, There are twenty-seven counties engaged in court actions which, in various ways, challenge the conditions of confinement in the county jail of each respective county; and

WHEREAS, The costs of upgrading the county jails of fifty-five counties would impose an unbearable financial burden upon the resources of the counties; and

WHEREAS, The West Virginia Legislature enacted Enrolled Committee Substitute for Senate Bill Number 389 on April 8, 1989, to be effective from passage ("S. B. 389"), which act amended the Regional Jail and Correctional Facility Authority Act (as amended by S. B. 389, the "Act"), codified as Article 20, Chapter 31 of the Code of West Virginia, 1981, as amended (the "Code"); and

WHEREAS, The Act imposed upon the Regional Jail and Correctional Facility Authority (the "Authority") the responsibility for the submission of a plan to the Joint Committee on Government and Finance (the "Joint Committee") detailing the means by which the Authority will comply with the orders of the Supreme Court of Appeals as to the structural and internal conditions and programs of the correctional facilities, including regional jails, in this state; and

WHEREAS, The Authority submitted such a plan to the Joint Committee pursuant to the Act (the "Master Plan") which details the means by which the conditions of confinement in the correctional facilities and regional jails in this state may be brought into compliance with constitutional standards; and

WHEREAS, Chapter thirty-one, article twenty, section five,
subsection (m) of the West Virginia Code requires that no bonds or other obligations may be issued or incurred by the Authority unless and until the Legislature by concurrent resolution has approved the purpose and amount of each project for which proceeds from the issuance of such bond or other obligation will be used; and

WHEREAS, The further progress toward implementation of the plan for the improvement of correctional facilities and the establishment of regional jails awaits the approval of the Legislature; therefore, be it

Resolved by the Legislature of West Virginia:

That the issuance and sale by the Authority of revenue or lease/purchase bonds or other obligations permitted by the Act, or other financing or financings permitted by the Code, in an amount sufficient to fund not more than one hundred ninety-seven million, four hundred forty-eight thousand, nine hundred dollars ($197,448,900.00) in projects, and all steps necessary or desirable to provide for the security for and sale of such obligations or other financings, are hereby approved by the Legislature for the following projects as described in the Master Plan and as may be further described in revisions of the Master Plan, as hereinafter provided.

The proceeds of the bonds or other obligations issued by the Authority pursuant to this Senate Concurrent Resolution may be used for any and all purposes, costs and expenses of any nature whatsoever under the Act, including, without limitation, the following:

(1) Acquisition of property, site preparation, design, construction, renovation, expansion, equipping, furnishing and related costs necessary to construct and prepare the following correctional facilities for operation, all at an estimated cost of sixty-one million, nine hundred thirty-two thousand dollars ($61,932,000.00), as follows:

NEW CONSTRUCTION:

REPLACEMENT FOR WEST VIRGINIA PENITENTIARY ... $ 46,200,000.00
(Fayette County Complex)
RENOVATION AND EXPANSION:

HUTTONSVILLE
   CORRECTIONAL CENTER ........... $ 8,017,000.00

PRUNYTOWN
   CORRECTIONAL CENTER ........... $ 1,523,000.00
   ANTHONY CORRECTIONAL CENTER $ 3,712,000.00
   WORK RELEASE CENTERS .......... $ 2,480,000.00
   TOTAL, CORRECTIONAL
   FACILITIES ..................... $ 61,932,000.00

and,

(2) Acquisition of property, site preparation, design,
construction, equipping and furnishing, including related costs
necessary to construct and prepare the following regional jails
for operation, all at an estimated cost of one hundred thirty-five
million, five hundred sixteen thousand, nine hundred dollars ($135,516,900.00), as follows:

   SOUTH CENTRAL REGIONAL JAIL .... $ 16,063,500.00
   CENTRAL REGIONAL JAIL ........... $ 10,360,800.00
   SOUTHWESTERN REGIONAL JAIL .... $ 11,014,200.00
   NORTHERN REGIONAL JAIL AND
   CORRECTIONAL FACILITY ........... $ 19,082,000.00
   (Marshall County Complex)
   WEST CENTRAL REGIONAL JAIL ..... $ 12,721,400.00
   SOUTHERN REGIONAL JAIL .......... $ 17,669,800.00
   WESTERN REGIONAL JAIL .......... $ 12,721,400.00
   NORTH CENTRAL REGIONAL JAIL .... $ 18,553,300.00
   TYGART VALLEY REGIONAL JAIL .... $ 12,432,900.00
   EASTERN REGIONAL JAIL ........... $  4,897,600.00
   REGIONAL JAIL TOTAL ............ $135,516,900.00

Provided, That the total amount of one hundred ninety-seven
million, four hundred forty-eight thousand, nine hundred
dollars ($197,448,900.00) in project costs, exclusive of financ-
ing and issuance costs and capitalized interest costs, if any,
as provided above, may not be exceeded although it is
specifically recognized and authorized that the actual cost of
any project may vary from the aforementioned estimated costs,
in which event transfers may be made between and among the
identified projects; and, be it

Further Resolved, That the Clerk of the Senate transmit a
copy of this resolution to the Governor, the Chief Justice of the Supreme Court of Appeals and the Chairman of the Regional Jail and Correctional Facility Authority.

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HOUSE RESOLUTION 19
(Originating in the Committee on Rules)
[Adopted February 19, 1990]

Amending the Rules of the House of Delegates relating to prohibiting smoking and the use of all other tobacco products in the House of Delegates Chamber, galleries and in House committee rooms during meetings.

Resolved by the House of Delegates:

That the standing Rules of the House of Delegates be amended to read as follows:

Smoking and use of tobacco products prohibited

136a. Smoking and the use of tobacco products are prohibited in the House chamber and House galleries during sessions and in House committee rooms during committee meetings or public hearings; provided, however, smoking and the use of tobacco products by members shall be allowed in the vestibule of the chamber.

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SENATE RESOLUTION 3
(By Senator Chafin)
[Adopted January 10, 1990]

Amending Senate Rule No. 27, relating to the appointment of standing committees.

Resolved by the Senate:

That Senate Rule No. 27 be amended to read as follows:

Committees.

27. At the commencement of each Legislature, standing committees shall be appointed, each committee to consist of the number of members indicated in the parentheses following the naming of the committee. The following committees shall be named:
1. On Agriculture (9).
2. On Banking and Insurance (13).
3. On Confirmations (9).
4. On Education (12).
5. On Energy, Industry and Mining (13).
6. On Finance (17).
8. On Health and Human Resources (11).
9. On Interstate Cooperation (7); (the President of the Senate is to be ex officio cochairperson).
11. On Labor (9).
12. On Military (9).
13. On Natural Resources (13).
14. On Rules (10); (the President of the Senate is to be ex officio chairperson).
15. On Transportation (9).
16. On Small Business (9).

SENATE RESOLUTION 13
(Originating in the Committee on Confirmations)

[Adopted March 5, 1990]

Amending the Rules of the Senate, relating to defining “next meeting of the Senate” for the purpose of confirmations.

Resolved by the Senate:

That the Standing Rules of the Senate be amended by adding thereto a new rule as follows:

Defining Next Meeting of the Senate

57a. The phrase “next meeting of the Senate” contained in article seven, section nine of the constitution of West Virginia
means any time the full Senate is convened and includes, but is not limited to, any regular session, any extraordinary session called during any recess or adjournment of the Legislature, during any impeachment proceeding or any time the Senate is convened pursuant to section ten-a, article one, chapter four of the code of West Virginia.
AN ACT supplementing, amending, reducing and transferring appropriations in Account No. 2950, as specified, including all necessary adjustments of increases, reductions or transfers of appropriations and language of appropriation in specified items and those items created herein, all supplementing and amending Enrolled Com. Sub. for S.B. 35, second regular session, one thousand nine hundred ninety, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That specified items of Account No. 2950, as found in Com. Sub. for S.B. 35, second regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented, amended, reduced and transferred by the items and language of appropriation to such extent as set forth herein to read as follows:

1 TITLE II. APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 Sec. 2. Appropriations of federal funds.
DEPARTMENT OF EDUCATION

51—State Department of Education—
State Aid to Schools

(WV Code Chapter 18 and 18A)

Acct. No. 2950

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</table>

The purpose of this supplementary appropriation bill is to appropriate public moneys, as specified (general revenues and federal funds) with insertion of such moneys into accounts in the budget bill and specified items thereof, together with adjustments of increase, reduction or transfer required. These public moneys, as newly provided for, shall be available for such use and expenditure upon passage of the bill and in fiscal year 1990-91, supplementing the budget bill for such fiscal year earlier enacted.
AN ACT to repeal section fourteen, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article two of said chapter by adding thereto a new section, designated section five-b; to amend article two-b of said chapter by adding thereto a new section, designated section two-a; to amend and reenact section thirteen, article five of said chapter; to amend and reenact section one, article eight of said chapter; to amend and reenact sections four, five, five-a, seven, nine, ten, thirteen and thirteen-b, article nine-a of said chapter; to amend article nine-b of said chapter by adding thereto a new section, designated section six-a; to amend and reenact section one, article twenty of said chapter; to further amend said article twenty by adding thereto a new section, designated section one-b; to amend and reenact section seven, article two, chapter eighteen-a of said code; to amend and reenact sections five-a, five-b and seven, article four of said chapter; to further amend said article four by adding thereto a new section, designated section five-d; and to amend article one, chapter eighteen-b of said code by adding thereto a new section, designated section eleven, all relating to public education generally; authorizing the state board to become a medicaid provider and ascertaining eligible students; permitting the state board to delegate provider status in certain instances and requiring an annual report; prohibiting withdrawal from participation in a multi-county vocational center; allowing county school boards to contract with colleges or universities or recognized campus organizations to provide school buses to transport college or university students, faculty and staff to and from such college or university; providing for the aforesaid contract to include cost of service and rules concerning student behavior; requiring certain individuals to be provided with information relating to
vocational or higher education opportunities; deleting obsolete language pertaining to meetings and reports for the joint establishment of county school systems; conforming the compulsory school attendance age with other sections of the code; requiring test publishers to norm homeschooling standardized tests; authorizing an additional test choice; requiring the standardized test to be less than ten years old; providing the test results to be reported as a national percentile; requiring test results to be made available by a certain date; decreasing the professional educator ratio of fifty-five per thousand and establishing priorities in the event of a reduction in force; providing for a minimum number of principals and central office administrators; deleting obsolete language pertaining to the foundation allowance for the fiscal year one thousand nine hundred eighty-eight; removing the prohibition that certain school employees may not be reduced-in-force in certain instances; permitting counties with increasing student populations to apply for additional bus funding; providing ninety percent of transportation costs to counties to cover certain costs in transporting certain students to and from multi-county vocational schools; delaying the increase in the allowance for other current expense for one year; providing an appropriation of fifteen million four hundred forty thousand four hundred ninety-three dollars for the school building authority for the fiscal year beginning on the first day of July, one thousand nine hundred ninety, and increasing such amount by at least seven million seven hundred thousand dollars in each subsequent year; changing the allowance for loss reduction to an allowance for counties in severe financial crisis; deleting obsolete language pertaining to total state appropriation for the basic foundation program; providing for an amount of funds for salary equity; delaying allocation of funding for remedial and accelerated programs for one year; delaying submission of county board's budget to the state board until the tenth day next following the state board's transmittal of the final state aid computations; decreasing the maximum age addressed by special education programs; permitting special education program completion by students
at least twenty-one years of age and enrolled prior to a certain date; requiring the education of exceptional and handicapped children in foster care and correctional facilities beginning on the first day of July, one thousand nine hundred ninety; deleting obsolete language pertaining to establishment of special education program for certain children; expanding the services provided to the severely handicapped to include handicapped children ages three through five, inclusive, beginning the first day of July, one thousand nine hundred ninety; broadening the definition of the term "handicapped children" beginning the first day of July, one thousand nine hundred ninety; requiring state board of education to adopt rules to assure appropriate educational programs for certain children in foster care and correctional facilities beginning the first day of July, one thousand nine hundred ninety; removing the limits placed on counties for teacher and service personnel salary supplements for one year and changing certain effective dates; authorizing a salary equity appropriation; providing for an adjustment in substitute teacher compensation; requiring state funded institutions of higher education to provide appropriate services to meet the needs of students with handicapping conditions; and repealing the section providing for incentives for staffing improvements.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel.
18B. Higher Education.

CHAPTER 18. EDUCATION.

Article.
2. State Board of Education.
2B. Area Vocational Program.
5. County Board of Education.
8. Compulsory School Attendance.
9A. Public School Support.
9B. State Board of School Finance.
20. Education of Exceptional Children.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5b. Medicaid eligible children.
1 The state board of education shall become a medicaid provider and seek out medicaid eligible students for the purpose of providing medicaid and related services to students eligible under the medicaid program and to maximize federal reimbursement for all services available under the Omnibus Budget Reconciliation Act of one thousand nine hundred eighty-nine, as it relates to medicaid expansion and any future expansions in the medicaid program for medicaid and related services for which state dollars are or will be expended: Provided, That the state board may delegate this provider status and subsequent reimbursement to regional educational service agencies (RESA) and/or county boards of education: Provided, however, That annually the state board of education shall report to the Legislature the number and age of children eligible for medicaid, the number and age of children with medicaid coverage, the types of medicaid eligible services provided, the
frequency of services provided, the medicaid dollars reimbursed; and that this report shall be on a county by county basis and made available no later than the first day of January, one thousand nine hundred ninety-one, and annually thereafter.

ARTICLE 2B. AREA VOCATIONAL PROGRAM.


Any county which participates in the operation of a multi-county vocational center shall not be permitted to withdraw from such participation.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

(1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection therewith, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

(3) To close any school which is unnecessary and to assign the pupils thereof to other schools: Provided, That such closing shall be officially acted upon and teachers and service personnel involved notified on or before the
first Monday in April, in the same manner as provided in section four of this article, except in an emergency, subject to the approval of the state superintendent, or under subdivision (5) of this section;

(4) To consolidate schools;

(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the school so closed are not transferred or reassigned to other schools, they receive one month's salary;

(6) (a) To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense and according to such regulations as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto at public expense, by rules and regulations and within the available revenues, transportation for those within two miles distance; to provide in addition thereto, at no cost to the board and according to rules and regulations established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by such commission, or the local or county chapter thereof: Provided, however, That in all cases the school buses owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided further, That the county board may provide, under rules established by the state board, for the certification of professional employees as drivers of board-owned vehicles with a seating capacity of less than ten passengers used for the transportation of pupils for school-sponsored activities other than transporting students between school and
And provided further, That the use of such vehicles shall be limited to one for each school-sponsored activity: And provided further, That buses shall be used for extracurricular activities as herein provided only when the insurance provided for by this section shall have been effected;

(b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of subdivisions (6) and (8) of this section;

(7) (a) To lease school buses operated only by drivers regularly employed by the board to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities in accordance with rules and regulations established by the board. All costs and expenses incurred by or incidental to the transportation of such children shall be borne by the lessee;

(b) To contract with any college or university or officially recognized campus organizations to provide transportation for college or university students, faculty or staff to and from such college or university: Provided, That only college and/or university students, faculty and staff are being transported. The contract shall include consideration and compensation for bus operators, repairs and other costs of service, insurance and any rules and regulations concerning student behavior;

(8) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils be contracted, then the contract therefor shall provide that the contractor shall carry insurance against negligence in such an amount as the board shall specify;

(9) To provide solely from county funds for all regular full-time employees of the board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia public employees insurance act;
(10) To employ teacher aides, to provide in-service training for teacher aides, the training to be in accordance with rules and regulations of the state board and, in the case of service personnel assuming duties as teacher aides in exceptional children programs, to provide a four-clock-hour program of training prior to such assignment which shall, in accordance with rules and regulations of the state board, consist of training in areas specifically related to the education of exceptional children;

(11) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach therein;

(12) To employ legal counsel;

(13) To provide appropriate uniforms for school service personnel;

(14) To provide at public expense and under regulations as established by any county board of education for the payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by such county board of education;

(15) To allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: Provided, that such usage is subject to the supervision of such board and is directly connected with and required by the nature and in the performance of such employee's duties and responsibilities;

(16) To provide, at public expense, adequate public liability insurance, including professional liability insurance for board employees;

(17) To enter into agreements with one another to provide, on a cooperative basis, improvements to the instructional needs of each county. Said cooperative agreements may be used to employ specialists in a field of academic study or support functions or services, therefor. Such agreements shall be subject to approval by the state board of education; and
To provide information about vocational or higher education opportunities to students with handicapping conditions. The board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state funded institutions of higher education. Such information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education.

"Quasi-public funds" as used herein means any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

The board of each county shall expend under such regulations as it establishes for each child an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

Compulsory school attendance shall begin with the school year in which the sixth birthday is reached prior to the first day of September of such year or upon enrolling in a publicly supported kindergarten program and continue to the sixteenth birthday.

Exemption from the foregoing requirements of compulsory public school attendance shall be made on behalf of any child for the following causes or conditions, each such cause or condition being subject to confirmation by the attendance authority of the county:

Exemption A. Instruction in a private, parochial or other approved school.—Such instruction shall be in a school approved by the county board of education and for a time equal to the school term of the county for the year. In all such schools it shall be the duty of the principal or other person in control, upon the request of
the county superintendent of schools, to furnish to the county board of education such information and records as may be required with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years;

Exemption B. Instruction in home or other approved place.—(a) Such instruction shall be in the home of such child or children or at some other place approved by the county board of education and for a time equal to the school term of the county. If such request for home instruction is denied by the county board of education, good and reasonable justification for such denial must be furnished in writing to the applicant by the county board of education. The instruction in such cases shall be conducted by a person or persons who, in the judgment of the county superintendent and county board of education, are qualified to give instruction in subjects required to be taught in the free elementary schools of the state. It shall be the duty of the person or persons providing the instruction, upon request of the county superintendent, to furnish to the county board of education such information and records as may be required from time to time with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years receiving such instruction. The state department of education shall develop guidelines for the homeschooling of special education students including alternative assessment measures to assure that satisfactory academic progress is achieved.

(b) Notwithstanding the provisions of subsection (a) of this Exemption B, the person or persons providing home instruction meet the requirements for Exemption B when the conditions of this subsection are met: Provided, That the county superintendent shall have the right to seek from the circuit court of the county an order denying the home instruction, which order may be granted upon a showing of clear and convincing evidence that the child will suffer educational neglect or that there are other compelling reasons to deny home instruction.

(1) The person or persons providing home instruction
present to the county superintendent or county board of education a notice of intent to provide home instruction and the name and address of any child of compulsory school age to be instructed; Provided, That if a child is enrolled in a public school, notice of intent to provide home instruction shall be given at least two weeks prior to withdrawing such child from public school;

(2) The person or persons providing home instruction submit satisfactory evidence of (i) a high school diploma or equivalent and (ii) formal education at least four years higher than the most academically advanced child for whom the instruction will be provided or achievement of a score on the National Teachers Examination sufficient for teacher certification in this state;

(3) The person or persons providing home instruction outline a plan of instruction for the ensuing school year; and

(4) The child receiving home instruction annually takes a standardized test, to be administered at a public school in the county where the child resides, or administered by a licensed psychologist or other person authorized by the publisher of the test, or administered by a person authorized by the county superintendent or county board of education. The child shall be administered a test which has been normed by the test publisher on that child's age or grade group. In no event may the child's parent or legal guardian administer the test. Where a test is administered outside of a public school, the child's parent or legal guardian shall pay the cost of administering the test. The public school or other qualified person shall administer to children of compulsory school age the Comprehensive Test of Basic Skills, the California achievement test, the Stanford achievement test, or the Iowa tests of basic skills, achievement and proficiency which test will be selected by the public school, or other person administering the test, in the subjects of English, grammar, reading, social studies, science and mathematics; and shall be administered under standardized conditions as set forth by the published instructions of the selected test. No test shall be administered if the publication date is more than ten years prior to the test administration date.
Each child's test results shall be reported as a national percentile for each of the six subjects tested. Each child's test results shall be made available on or before the thirtieth day of June of the school year in which the test is to be administered to the person or persons providing home instruction, the child's parent or legal guardian and the county superintendent. Upon request of a duly authorized representative of the West Virginia department of education, each child's test results shall be furnished by the person or persons providing home instruction, or by the child's parent or legal guardian, to the state superintendent of schools.

If the child's composite test results for any single year for English, grammar, reading, social studies, science and mathematics fall below the fortieth percentile on the selected tests, the person or persons providing home instruction shall initiate a remedial program to foster achievement above that level. If, after one calendar year, the child's composite test results are not above the fortieth percentile level, home instruction shall no longer satisfy the compulsory school attendance requirement.

The superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, as may assist the person or persons providing home instruction subject to their availability. Any child receiving home instruction may, upon approval of the county board of education, exercise the option to attend any class offered by the county board of education as the person or persons providing home instruction may deem appropriate subject to normal registration and attendance requirements.

Exemption C. Physical or mental incapacity.—Physical or mental incapacity shall consist of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written statement of a licensed physician or authorized school nurse shall be required under the provisions of this article:

Provided, That in all cases incapacity shall be narrowly
defined and in no case shall the provisions of this article allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise entitled to a free appropriate education;

Exemption D. Residence more than two miles from school or school bus route.—The distance of residence from a school, or school bus route providing free transportation, shall be reckoned by the shortest practicable road or path, which contemplates travel through fields by right of permission from the landholders or their agents. It shall be the duty of the county board of education, subject to written consent of landholders, or their agents, to provide and maintain safe foot bridges across streams off the public highways where such are required for the safety and welfare of pupils whose mode of travel from home to school or to school bus route must necessarily be other than along the public highway in order for said road or path to be not over two miles from home to school or to school bus providing free transportation;

Exemption E. Hazardous conditions.—Conditions rendering school attendance impossible or hazardous to the life, health or safety of the child;

Exemption F. High school graduation.—Such exemption shall consist of regular graduation from a standard senior high school;

Exemption G. Granting work permits.—The county superintendent may, after due investigation, grant work permits to youths under sixteen years of age, subject to state and federal labor laws and regulations: Provided, That a work permit may not be granted on behalf of any youth who has not completed the eighth grade of school;

Exemption H. Serious illness or death in the immediate family of the pupil.—It is expected that the county attendance director will ascertain the facts in all cases of such absences about which information is inadequate and report same to the county superintendent of schools;

Exemption I. Destitution in the home.—Exemption based on a condition of extreme destitution in the home
may be granted only upon the written recommendation of the county attendance director to the county superintendent following careful investigation of the case. A copy of the report confirming such condition and school exemption shall be placed with the county director of public assistance. This enactment contemplates every reasonable effort that may properly be taken on the part of both school and public assistance authorities for the relief of home conditions officially recognized as being so destitute as to deprive children of the privilege of school attendance. Exemption for this cause shall not be allowed when such destitution is relieved through public or private means;

Exemption J. Church ordinances; observances of regular church ordinances.—The county board of education may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children: Provided, That such exemption shall be subject to the rules and regulations prescribed by the county superintendent and approved by the county board of education;

Exemption K. Alternative private, parochial, church or religious school instruction.—In lieu of the provisions of Exemption A hereinabove, exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order, or other nonpublic school which elects to comply with the provisions of article twenty-eight, chapter eighteen of the code of West Virginia.

The completion of the eighth grade shall not exempt any child under sixteen years of age from the compulsory attendance provision of this article: Provided, That there is a public high school or other public school of advanced grades or a school bus providing free transportation to any such school, the route of which is within two miles of the child's home by the shortest practicable route or path as hereinbefore specified under Exemption D of this section.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-4. Foundation allowance for professional educators.
§18-9A-5. Foundation allowance for service personnel.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.


§18-9A-9. Foundation allowance for other current expense and substitute employees.

§18-9A-10. Foundation allowance to improve instructional programs.


§18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.

§18-9A-4. Foundation allowance for professional educators.

The basic foundation allowance to the county for professional educators shall be the amount of money required to pay the state minimum salaries, in accordance with provisions of article four, chapter eighteen-a of the code, to such personnel employed: Provided, That in making this computation no county shall receive an allowance for such personnel which number is in excess of fifty-five professional educators to each one thousand students in adjusted enrollment: Provided, however, That for the school year commencing on the first day of July, one thousand nine hundred ninety, no county shall receive an allowance for such personnel which number is in excess of fifty-four and thirty-three one-hundredths professional educators to each one thousand students in adjusted enrollment: Provided further, That for the school year commencing on the first day of July, one thousand nine hundred ninety-one and thereafter, no county shall receive an allowance for such personnel which number is in excess of fifty-three and one-half professional educators to each one thousand students in adjusted enrollment: And provided further, That any county not qualifying under the provision of section fourteen of this article shall be eligible for a growth rate in professional personnel in any one year not to exceed twenty percent of its total potential increase under this provision, except that in no case shall such limit be fewer than five professionals: And provided further, That the number of and the allowance for personnel paid in part by state and county funds shall be prorated: And provided further, That where two or more counties join together in support of a vocational
or comprehensive high school or any other program or service, the professional educators for such school or program may be prorated among the participating counties on the basis of each one's enrollment therein and that such personnel shall be considered within the above-stated limit: And provided further, That in the school year beginning the first day of July, one thousand nine hundred eighty-eight, and the succeeding school year, each county board shall establish and maintain a minimum ratio of fifty professional instructional personnel per one thousand students in adjusted enrollment, and in the school year beginning the first day of July, one thousand nine hundred ninety, and for each succeeding school year, each county board shall establish and maintain a minimum ratio of fifty-one professional instructional personnel per one thousand students in adjusted enrollment: And provided further, That no county shall have less than a total of five principals and central office administrators. Any county board which does not establish and maintain this minimum ratio shall suffer a pro rata reduction in the allowance for professional educators under this section, and, further, any county board which does not establish and maintain this minimum ratio shall utilize any and all allocations to it by provision of section fourteen of this article solely to employ professional instructional personnel until the minimum ratio is attained. Every county shall utilize methods other than reductions in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section. Any reductions resulting from the provisions of this section shall be made in the following order: (1) central office administrators, (2) assistant principals, and (3) principals.

Every county board of education shall annually determine the number of professional educators employed that exceeds the number allowed by the public school support plan and determine the amount of salary supplement that would be available per state authorized employee if all expenditures for such excess employees were converted to annual salaries for state authorized professional educators. Such information shall be
§18-9A-5. Foundation allowance for service personnel.

1. The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of article four, chapter eighteen-a of the code, to such service personnel employed: Provided,

2. That no county shall receive an allowance for an amount in excess of thirty-four service personnel per one thousand students in adjusted enrollment: Provided, however, That the state superintendent of schools is authorized in accordance with rules and regulations established by the state board and upon request of a county superintendent to waive the maximum ratio of thirty-four service personnel per one thousand students in adjusted enrollment and the twenty percent per year growth cap provided in this section, to the extent appropriations are provided, in those cases where the state superintendent determines that student population density and miles of bus route driven justify such waiver, except that no waiver shall be granted to any county whose financial statement shows a net balance in general current expense funds greater than three percent at the end of the previous fiscal year: Provided further, That on or before the first day of each regular session of the Legislature, the state board, through the state superintendent, shall make to the Legislature a full report concerning the number of waivers granted and the fiscal impact related thereto. Every county shall utilize methods other than reduction in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section.

3. For any county which has in excess of thirty-four service personnel per one thousand students in adjusted enrollment, such allowance shall be computed based upon the average state minimum pay scale salary of all service personnel in such county: Provided, That for any county having fewer than thirty-four service personnel per one thousand students in adjusted enrollment, in any
one year, the number of service personnel used in
making this computation may be increased the succeed-
ing years by no more than twenty percent per year of
its total potential increase under this provision, except
that in no case shall such limit be fewer than two service
personnel until the county attains the maximum ratio
set forth: Provided, however, That where two or more
counties join together in support of a vocational or
comprehensive high school or any other program or
service, the service personnel for such school or program
may be prorated among the participating counties on
the basis of each one's enrollment therein and that such
personnel shall be considered within the above-stated
limit.

Every county board of education shall annually
determine the number of service personnel employed
that exceeds the number allowed by the public school
support plan and determine the amount of salary
supplement that would be available per state authorized
employee if all expenditures for such excess employees
were converted to annual salaries for state authorized
service personnel. Such information shall be published
annually in each school report card of each county.

§18-9A-5a. Ratio of foundation allowances for profes-
sional educators and service personnel to
net enrollment.

(a) The purpose of this section is to establish maxi-
mum ratios between the numbers of professional
educators and service personnel in the counties which
are funded through the public school support plan and
the net enrollment in the counties, such ratios are in
addition to the ratios provided for in sections four and
five of this article. It is the intent of the Legislature to
adjust these ratios pursuant to legislative act as may be
appropriate when additional personnel are needed to
perform additional duties.

(b) Commencing with the school year one thousand
nine hundred eighty-nine—ninety, and each year
thereafter, in computing the basic foundation allowance
to a county for professional educators and the basic
foundation allowance to a county for service personnel under sections four and five of this article, a county shall not receive an allowance for such personnel which number per one thousand students in net enrollment is in excess of the number of professional educators and the number of service personnel in the county computed as follows:

<table>
<thead>
<tr>
<th>For the school year</th>
<th>Maximum professional educators per 1000 net enrollment the preceding year</th>
<th>Maximum service personnel per 1000 net enrollment the preceding year</th>
</tr>
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<tr>
<td>1989-90</td>
<td>76.5</td>
<td>45.5</td>
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<td>1990-91</td>
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<td>1991-92</td>
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<td>1992-93</td>
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<td>1993-94</td>
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<td>43.75</td>
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<tr>
<td>1994-95 and thereafter</td>
<td>74.0</td>
<td>43.5</td>
</tr>
</tbody>
</table>

(c) Every county shall utilize methods other than reductions in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section.

(d) For the school years one thousand nine hundred eighty-nine—ninety and one thousand nine hundred ninety—one only, if a school district loses more than six percent of the number chargeable for the previous school year for professional educator positions or service personnel positions, due to the maximum ratios established in subsection (b) of this section, it may apply to the state board for a waiver of said ratios to the extent that the loss exceeds either six percent of its professional educators or service personnel: Provided, That the county board of education establishes and maintains a minimum ratio of fifty professional instructional personnel per one thousand students in adjusted enrollment for the school year beginning the first day of July, one thousand nine hundred eighty-nine, and fifty-one professional instructional personnel per one thousand students in adjusted enrollment for the school year one thousand nine hundred ninety—one as
required in section four of this article. Waivers shall be
determined on a case by case basis according to rules
adopted by the state board and granted to the extent
funds are appropriated by the Legislature for this
purpose. Prior to the adoption of such rules, the state
board shall conduct a thorough review of the staffing
patterns in each county. Any personnel positions funded
as a result of a waiver granted under the provisions of
this subsection shall not be included in the computations
set forth in sections four and five of this article.


1 The allowance in the foundation school program for
each county for transportation shall be the sum of the
following computations:

4 (1) Eighty percent of the transportation cost within
each county for maintenance, operation and related
costs, exclusive of all salaries;

7 (2) The total cost, within each county, of insurance
premiums on buses, buildings and equipment used in
transportation: Provided, That such premiums were
procured through competitive bidding;

10 (3) For the school year beginning the first day of July,
one thousand nine hundred eighty-nine, and thereafter,
an amount equal to ten percent of the current replace-
ment value of the bus fleet within each county as
determined by the state board, such amount to be used
only for the replacement of buses. In addition, in any
school year in which its net enrollment increases when
compared to the net enrollment the year immediately
preceding, a school district may apply to the state
superintendent for funding for an additional bus.
Furthermore, large, sparsely populated counties may
also apply to the state superintendent for funding for
additional mini-buses. The state superintendent shall
make a decision regarding each application based upon
an analysis of the individual school district’s net
enrollment history and transportation needs or, in the
case of a large, sparsely populated county, the popula-
tion of the county: Provided, That the superintendent
shall not consider any application which fails to
document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year.

(4) Eighty percent of the cost of contracted transportation services and public utility transportation with each county;

(5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving such aid within each county; and

(6) Ninety percent of the total cost of transportation operations and related expenses, excluding salaries and maintenance for transporting students to and from classes at a multi-county vocational center.

The total state share for this purpose shall be the sum of the county shares: Provided, That no county shall receive an allowance which is greater than one third above the computed state average allowance per mile multiplied by the total mileage in the county.

§18-9A-9. Foundation allowance for other current expense and substitute employees.

The total allowance for other current expense and substitute employees shall be the sum of the following:

(1) For current expense, for the year one thousand nine hundred ninety-one only, ten percent of the sum of the computed state allocation for professional educators and service personnel as determined in sections four and five of this article, and thereafter the rate shall be ten and six-tenths percent. Distribution to the counties shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators as determined in section four of this article. Distribution to the counties
shall be made proportional to the total county allocation for professional educators; plus

(3) For service personnel substitutes or current expense, two and five-tenths percent of the computed state allocation for service personnel as determined in section five of this article. Distribution to the counties shall be made proportional to the total county allocation for service personnel.

§18-9A-10. Foundation allowance to improve instructional programs.

(a) Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety, and thereafter, twenty-eight million eight hundred thousand dollars, in addition to funds which accrue from allocations due to increase in total local share above that computed for the school year beginning on the first day of July, one thousand nine hundred ninety, from balances in the general school fund, or from appropriations for such purpose shall be allocated to increase state support of counties as follows:

(1) Twenty percent of these funds shall be allocated to the counties proportional to adjusted enrollment; and

(2) Each county whose allocation in subsection (1) is less than one hundred fifty thousand dollars in any fiscal year shall then receive an amount which equals the difference between such amount received and one hundred fifty thousand dollars.

(b) The remainder of these funds shall be allocated according to the following plan for progress toward basic resources per pupil equity:

Beginning with the county which has the lowest basic resources per pupil and progressing through the counties successively to and beyond the county with the highest basic resources per pupil, the funds available shall be allocated in amounts necessary to increase moneys available to the county or counties to the basic resources per pupil level, as nearly as is possible, of the county having the next higher basic resources per pupil.

Provided, That to be eligible for its allocation under this...
section, a county board shall lay the maximum regular
tax rates set out in section six-c, article eight, chapter
eleven of this code: Provided, however, That moneys
allocated by provision of this section shall be used to
improve instructional programs according to a plan for
instructional improvement which the affected county
board shall file with the state board by the first day of
August of each year, to be approved by the state board
by the first day of September of that year if such plan
substantially complies with standards to be adopted by
the state board: Provided further, That no part of this
allocation may be used to employ professional educators
in counties until and unless all applicable provisions of
sections four and fourteen of this article have been fully
utilized. Such instructional improvement plan shall be
made available for distribution to the public at the office
of each affected county board.

(c) Commencing with the school year beginning on the
first day of July, one thousand nine hundred ninety,
fifteen million, four hundred forty thousand, four
hundred ninety-three dollars shall be paid into the
school building capital improvements fund created by
section six, article nine-d of this chapter, and shall be
used solely for the purposes of said article nine-d. In
each fiscal year thereafter, fifty percent of the funds
which accrue due to an increase in local share above that
computed for the school year beginning on the first day
of July, one thousand nine hundred eighty-seven, shall
be paid into the school building capital improvements
fund created by section six, article nine-d of this
chapter, and shall be used solely for the purposes of said
article nine-d: Provided, That in each such subsequent
fiscal year, not less than seven million seven hundred
dollar shall be added to the amount of the
prior year's appropriation for such fund.

(d) There shall be appropriated seven million, four
hundred ten thousand, six hundred sixty-eight dollars
for aid to counties which may be expended by the county
boards for the initiation, and/or improvements of special
education programs including employment of new
special education professional personnel solely serving
exceptional children; instructional programs which utilize state of the art technology; training of educational personnel to work with exceptional children; and supportive costs such as materials, transportation, contracted services, minor renovations and other costs directly related to the special education delivery process prescribed by the state board. The appropriation may also be used for nonpersonnel costs associated with the maintenance of special education programs in accordance with such rules as established by the state board. The appropriation includes out-of-state instruction and may be expended to provide instruction, care and maintenance for educable persons who are severely handicapped and for whom the state provides no facilities.

(e) There shall be appropriated two million, one thousand, seven hundred thirty-two dollars to be used by the state department of education which may be expended for the purposes of paying staff and operating costs of both administrative/program personnel and instructional personnel delivering education to handicapped children in facilities operated by the state division of health; paying state department of education staff, current expenses and equipment; supporting a gifted summer camp; and supporting special state projects, including, but not limited to, (1) an instructional materials center for visually handicapped children at the West Virginia Schools for the Deaf and the Blind, (2) the state special olympics program, (3) the West Virginia advisory council for the education of exceptional children at the West Virginia College of Graduate Studies, (4) statewide training activities or other programs benefiting exceptional children and (5) the state very special arts program.


For the fiscal year beginning on the first day of July, one thousand nine hundred ninety only, there shall be an allowance for counties who have suffered a severe financial crisis for two or more consecutive years, as determined by the department of education, after taking
under consideration funding stability, sparsity of
population and staffing ratio to students, among other
factors. The amount of such allowance shall be deter-
mained by policies adopted by the state board of
education. The amount of such allowance shall be
contingent upon appropriations provided by the Legis-
lature and shall be allocated to counties in accordance
with policies adopted by the state board of education.

§18-9A-13b. Allowances for remedial and accelerated
education programs and salary equity.

For the school year one thousand nine hundred eighty-
nine—ninety only, funds which accrue from allocations
due to changes in adjusted enrollment above that
computed for the school year beginning on the first day
of July, one thousand nine hundred eighty-seven, shall
be distributed for the purpose of achieving equity within
the state basic foundation program.

Commencing with the school year beginning on the
first day of July, one thousand nine hundred ninety-one
and thereafter, funds which accrue from allocations due
to changes in adjusted enrollment above that computed
for the school year beginning on the first day of July,
one thousand nine hundred eighty-seven, or from
appropriations for such purpose, shall be allocated to
increase state support for salary equity and to develop
and implement remedial and accelerated programs in
the following manner:

Eighty percent of these funds shall be allocated for the
purpose of attaining salary equity among the counties
pursuant to section five, article four, chapter eighteen-
a, except that for the school year commencing on the
first day of July, one thousand nine hundred ninety only,
the allocation to salary equity shall be made in accor-
dance with the provisions of section five-d, article four,
chapter eighteen-a of this code; and

Twenty percent of these funds shall be allocated to
implement remedial and accelerated programs as
developed under guidelines of the state board, except
that for the school year commencing on the first day of
July, one thousand nine hundred ninety only, the
allocation to implement remedial and accelerated programs shall be made only to the extent funds are appropriated for such programs.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-6a. Delaying submission of budget.

Notwithstanding any other provisions of the code to the contrary, the county board shall not be required to submit its budget for approval by the state board of education as provided by section twelve-a, article eight, chapter eleven of this code and sections six and seven of article nine-b, chapter eighteen of this code, until the tenth day next following the state board’s transmittal of final state aid computations following the adoption of the state budget, but no later than the thirtieth day of May: Provided, That, in any year in which the state budget is not adopted on or before the first day of May, the state board may require the county board to adopt a preliminary budget and to submit it to the state board no later than the thirtieth day of May, and when final computations of state aid are transmitted to the county board, the county board shall make such adjustments as are necessary prior to final adoption of the budget.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1. Establishment of special programs and teaching services for exceptional children.

§18-20-1b. Preschool programs for handicapped children; rules and regulations.

§18-20-1. Establishment of special programs and teaching services for exceptional children.

In accordance with the following provisions, county boards of education throughout the state shall establish and maintain for all exceptional children between five and twenty-one years of age special educational programs, including, but not limited to, special schools or classes, regular classroom programs, home-teaching or visiting-teacher services for any type or classification as the state board shall approve. Special educational programs shall continue to be provided to those children who are at least twenty-one years of age and enrolled
in the above mentioned "special education program" prior to the first day of September, one thousand nine hundred ninety-one, until they reach twenty-three years of age. Provisions shall be made for educating exceptional children (including the handicapped and the gifted) who differ from the average or normal in physical, mental or emotional characteristics, or in communicative or intellectual deviation characteristics, or in both communicative and intellectual deviation characteristics, to the extent that they cannot be educated safely or profitably in the regular classes of the public schools or to the extent that they need special educational provisions within the regular classroom in order to educate them in accordance with their capacities, limitations and needs: Provided, That for the school year beginning on the first day of July, one thousand nine hundred ninety, provisions shall be made for educating exceptional children, including the handicapped, the gifted in grades one through eight, the pupils enrolled on the first day of July, one thousand nine hundred eighty-nine, in the gifted program in grades nine through twelve and the exceptional gifted in grades nine through twelve. The term "exceptional gifted" means those students in grades nine through twelve identified as gifted and at least one of the following: Behavior disorder, specific learning disabilities, psychological adjustment disorder, underachieving, or economically disadvantaged. Exceptional gifted children shall be referred for identification pursuant to recommendation by a school psychologist, school counselor, principal, teacher, parent or by self-referral, at which time the placement process, including development of an individualized education program, and attendant due process rights, shall commence. Exceptional gifted children, for purposes of calculating adjusted enrollment pursuant to section two, article nine-a of this chapter, shall not exceed one percent of net enrollment in grades nine through twelve. Nothing herein shall be construed to limit the number of students identified as exceptional gifted and who receive appropriate services. Each county board of education is mandated to provide gifted education to its students
according to guidelines promulgated by the state board and consistent with the provisions of this chapter. Upon the recommendation of a principal, counselor, teacher and parent, a student who does not meet the gifted eligibility criteria may participate in any school program deemed appropriate for the student provided that classroom space is available. In addition, county boards of education may establish and maintain other educational services for exceptional children as the state superintendent of schools may approve.

County boards of education shall establish and maintain these special educational programs, including, but not limited to, special schools classes, regular class programs, home-teaching and visiting-teacher services. The special education programs shall include home-teaching or visiting-teacher services for children who are homebound due to injury or who for any other reason as certified by a licensed physician are homebound for a period that has lasted or will last more than three weeks: Provided, That pupils receiving such homebound or visiting-teacher services shall not be included when computing adjusted enrollment as defined in section two, article nine-a, chapter eighteen of this code. The state board shall adopt rules to advance and accomplish this program and to assure that all exceptional children in the state, including children in mental health facilities, residential institutions and private schools, will receive an education in accordance with the mandates of state and federal laws: Provided, however, That commencing with the school year beginning on the first day of July, one thousand nine hundred ninety-one, all exceptional children in the state in foster care and correctional facilities will receive an education in accordance with the mandates of state and federal laws.

§18-20-1b. Preschool programs for handicapped children; rules and regulations.

(a) During the school year beginning on the first day of July, one thousand nine hundred ninety-one, each county board of education shall develop a coordinated service delivery plan in accordance with standards for
preschool programs for handicapped children to be
developed by the state board of education and begin
services where plans are already developed.

(b) Each county board of education shall establish and
maintain special education programs, including, but not
limited to, special classes, regular classes and home-
teaching and visiting-teacher services for all handi-
capped children ages three through five, inclusive.

As used in this section, the term "handicapped
children" means those children who fall in any one of
the following categories as defined or to be defined in
the state board of education standards for the education
of exceptional children: Severe behavioral disorders,
communication disordered, deaf-blind, developmentally
delayed, hearing impaired, other health impaired
including autism, physically handicapped, mentally
impaired or visually impaired.

Before the first day of August, one thousand nine
hundred ninety-one, the state board of education shall
adopt rules to advance and accomplish this program and
to assure that an appropriate educational program is
available to all such children in the state, including
children in mental health facilities, residential institu-
tions, foster care, correctional facilities and private
schools.

This section does not prevent county boards of
education from providing special education programs,
including, but not limited to, special schools or classes,
regular class programs and home-teaching or visiting-
teacher services for severely handicapped preschool
children prior to such times as are required by this
section.

CHAPTER 18A. SCHOOL PERSONNEL.

Article
4. Salaries, Wages, and Other Benefits.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-7. Assignment, transfer, promotion, demotion,
suspension and recommendation of dismis-
The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred, except that for the school year one thousand nine hundred eighty-nine—ninety only, the superintendent shall have until the fourth Monday of April to provide an employee with such written notice. Any teacher or employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer. Such statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before the first Monday in May, except that for the school year one thousand nine hundred eighty-nine—ninety only, the hearing shall be held on or before the fourth Monday in May, one thousand nine hundred ninety. At the hearing, the reasons for the proposed transfer must be shown.

The superintendent at a meeting of the board on or before the first Monday in May shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year, except that for the school year one thousand nine hundred eighty-nine—ninety only, the superintendent shall have until the fourth Monday in May to provide the board with such written list. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those
recommended for transfer shall be included in the minute record of such meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such persons’ last known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment and the reasons therefor. The superintendent’s authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the superintendent with the board of education and such period of suspension shall not exceed thirty days unless extended by order of the board.

The provisions of this section respecting hearing upon notice of transfer shall not be applicable in emergency situations where the school building becomes damaged or destroyed through an unforeseeable act and which act necessitates a transfer of such school personnel because of the aforementioned condition of the building.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-5a. County salary supplements for teachers.

§18A-4-5b. County salary supplements for school service personnel.

§18A-4-5d. 1990 appropriation for salary equity.

§18A-4-7. Substitute teachers pay.

§18A-4-5a. County salary supplements for teachers.

County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform throughout the county as to the above stipulated training classifications, experience, responsibility and other requirements. Beginning with the school year commencing on the first day of July, one thousand nine hundred ninety-one, no such county schedule may exceed one hundred two and one-half percent of a schedule which incorporates the state minimum salary for teachers in effect on the first day of July, one thousand nine hundred ninety-one, and adopts a supplement which equals the highest supple-
ment provided by a county on the first day of January, one thousand nine hundred ninety-one, so as to assist the state in meeting its objective of salary equity among the counties: Provided, That all teachers in the state shall be entitled to any increases in the minimum salary schedules established under the provisions of this article, and when a county schedule changes due to said increase in the state minimum salary taking effect after the first day of July, one thousand nine hundred ninety-one, it shall not be deemed to exceed the maximum salary schedule prescribed herein.

Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties, and for teachers of one-teacher schools, and they may provide additional compensation for any teacher assigned duties in addition to the teacher's regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day. Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred ninety, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

Counties may provide, in a uniform manner, benefits for teachers which require an appropriation from local funds including, but not limited to, dental, optical, health and income protection insurance, vacation time and retirement plans excluding the state teachers retirement system. Nothing herein shall prohibit the maintenance nor result in the reduction of any benefits in effect on January one, one thousand nine hundred eighty-four, by any county board of education.
To further assist the state in meeting such objective, each county board of education shall provide to the state board of education on or before the first day of November, one thousand nine hundred eighty-nine, such information as the state board directs to assist the state superintendent of schools in preparing a report to be submitted to the Legislature on the first day of the regular session thereof in the year one thousand nine hundred ninety. Such report shall include findings, conclusions and recommendations with respect to benefits provided and meeting the objective of benefit equity among the counties.

§18A-4-5b. County salary supplements for school service personnel.

The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article. Beginning with the school year commencing on the first day of July, one thousand nine hundred ninety-one, no such schedule may exceed one hundred two and one-half percent of a schedule which incorporates the state minimum salary for school service personnel in effect on the first day of July, one thousand nine hundred ninety-one, and adopts a monthly supplement of two hundred and five dollars for zero years of experience for all pay grades and which increases said monthly supplement by two dollars for each year of experience codified for school service personnel in this article, so as to assist the state in meeting its objective of salary equity among the counties: Provided, That all school service personnel in the state shall be entitled to any increases in the minimum salary for school service personnel established under the provisions of this article, and when a county schedule changes due to said increase in the state minimum salary taking effect after the first day of July, one thousand nine hundred ninety-one, it shall not be deemed to exceed the maximum salary schedule prescribed herein. Any county supplement for any position which, on the first day of January, one thousand nine hundred ninety-one, extends the schedule beyond the maximum prescribed herein for such position shall be
exempt from the maximums stated herein, subject to the approval of the state board, but no such supplement shall be increased beyond the amount received on the first day of January, one thousand nine hundred ninety-one.

These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred ninety, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

Counties may provide, in a uniform manner, benefits for service personnel which require an appropriation from local funds including, but not limited to, dental, optical, health and income protection insurance, vacation time and retirement plans excluding the state teachers retirement system. Nothing herein shall prohibit the maintenance nor result in the reduction of any benefits in effect on January one, one thousand nine hundred eighty-four, by any county board of education.

To further assist the state in meeting such objective, each county board of education shall provide to the state board of education on or before the first day of November, one thousand nine hundred eighty-nine, such information as the state board directs to assist the state superintendent of schools in preparing a report to be submitted to the Legislature on the first day of the regular session thereof in the year one thousand nine hundred ninety. Such report shall include findings,
conclusions, and recommendations with respect to benefits provided and meeting the objective of benefit equity among the counties.

§18A-4-5d. 1990 appropriation for salary equity.

Notwithstanding any other provisions of this code to the contrary, for the fiscal year beginning on the first day of July, one thousand nine hundred ninety only, not less than twenty-seven million, four hundred thousand dollars shall be appropriated and expended for salary equity among the counties in addition to such amounts as were expended for such purpose prior to the effective date of this section: Provided, That for professional educators each person shall receive a minimum salary equity adjustment of five hundred thirty-five dollars per year and that for service personnel each person shall receive a minimum salary equity adjustment of twenty dollars per month: Provided, however, That the remainder of the equity money shall be distributed as directed in section five of this article: Provided further, That an adequate amount of such funds shall be reserved to finance the appropriate foundation allowances for fixed charges as provided for in section six, article nine-a, chapter eighteen of this code: And provided further, That notwithstanding the provisions of said sections five and five-c of this article, foundation allowances other than for fixed charges shall not be financed from such funds.

§18A-4-7. Substitute teachers pay.

The pay of a substitute teacher shall not be less than eighty percent of the daily rate of the state basic salary paid to teachers: Provided, That any substitute teacher who teaches in excess of ten consecutive instructional days in the same position shall, thereafter, not be paid less than eighty percent of the daily rate of the state advanced salary based upon teaching experience: Provided, however, That any substitute teacher who teaches in excess of thirty days in the same position shall be paid the daily rate of the advanced salary, within that teacher's county.
ARTICLE 1. GOVERNANCE.

§18B-1-11. Colleges and universities to provide appropriate services to meet needs of students with handicapping conditions.

1 Each state funded institution of higher education accepting students with handicapping conditions, such as physical, learning, or severe sensory disabilities, shall provide services in accordance with Rehabilitation Act 504 appropriate to meet the educational needs of these students. Such information shall be provided to local boards of education for information dissemination to students and parents to fulfill the goals of transition.
AN ACT making supplementary appropriation of public moneys, as specified, out of the treasury with insertion thereof into appropriation accounts, as specified, and with all necessary adjustments of increase of items and language of appropriation in such specified accounts; supplementing and amending chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That Account Nos. 1210, 1245, 1800, 2785, 2795, 2855, 3330, 3500, 3770, 4405, 5200 and 5640, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be added, supplemented and amended by the items and language of appropriation to such extent as set forth herein, with all other items and language of appropriation of such accounts, as set forth in the budget bill, to remain unchanged and unaffected, to read as follows:
1590 APPROPRIATIONS

TITLE II—APPROPRIATIONS.

Section 8. Appropriations from surplus revenue.

173b—Office of Community and Industrial Development
(WV Code Chapter 5B)

Acct. No. 1210

1 Personal Services—Total............... $ 400,000

173c—Board of Directors of the State College System Control Account
(WV Code Chapter 18B)

Acct. No. 2785

1 Unclassified—Total............... $ 500,000

It is the intent of the Legislature for this appropriation to be used solely for increases in employee salaries.

173d—Board of Trustees of the University System of West Virginia Control Account
(WV Code Chapter 18B)

Acct. No. 2795

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

It is the intent of the Legislature for this appropriation to be used solely for increases in employee salaries.

173e—Board of Trustees of the University System of West Virginia
University of West Virginia Health Sciences Account
(WV Code Chapter 18B)

Acct. No. 2855

1 Unclassified—Total............... $ 1,500,000
It is the intent of the Legislature for this appropriation to be used solely for increases in employee salaries.

173f—West Virginia Schools for the Deaf and the Blind
(WV Code Chapters 18 and 18A)
Acct. No. 3330
1  Personal Services—Total ............... $  200,000

173g—State Board of Rehabilitation—Division of Rehabilitation Services
(WV Code Chapter 18)
Acct. No. 4405
1  Personal Services—Total ............... $  200,000

173h—Division of Corrections—Correctional Units
(WV Code Chapters 25, 28, 29 and 62)
Acct. No. 3770
1  Personal Services—Total ............... $ 1,200,000

173i—Tax Division
(WV Code Chapter 11)
Acct. No. 1800
1  Personal Services ....................... $  350,000
2  Unclassified ...........................  350,000
3  Total ................................. $  700,000

The Unclassified appropriation above shall be used for salaries and related expenses to originate and maintain and make public on a recurring basis a tax expenditure study to identify the cost to the state in foregone revenues caused by tax credits administered by the department of tax and revenue.
**Appropriations**

1

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173j—Library Commission

(WV Code Chapter 10)

Acct. No. 3500

1 Personal Services—Total.............. $ 50,000

173k—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 5200

1 Personal Services—Total.............. $ 50,000

173l—Governor's Office

(WV Code Chapter 5)

Acct. No. 1245

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

Any part or all of this appropriation may be transferred to any other account within the general revenue fund to provide for a salary increase for employees of the state.

173m—Water Resources Board

(WV Code Chapter 20)

Acct. No. 5640

1 Personal Services.............. $ 60,152

2 Annual Increment.............. 864

3 Employee Benefits.............. 18,690

4 Unclassified.............. 41,752

5 Total .............. $ 121,458

The purpose of this supplementary appropriation bill is to appropriate public money, as specified, with insertion of such moneys into accounts in the budget bill and specified items thereof, together with all adjustments of increase required. These public moneys, as newly provided for, shall be available for such use and
expenditure upon passage of the bill and in fiscal year 1990-91, supplementing the budget bill for such fiscal year earlier enacted.

It is the intent of the Legislature that salary increases made possible by these appropriations and other funds available to agencies be implemented by the division of personnel, excluding accounts governed by the board of directors of the college system and the board of trustees of the university system, by establishing a minimum annual salary for full-time regular employees within the classified service of ten thousand dollars per annum. It is further the intent of the Legislature to increase every annual salary in the pay plan for full-time regular employees by one thousand and eight dollars unless the ten thousand dollars mentioned above establishes a higher increase: Provided, That any full-time state employee, except employees of the board of directors of the college system and the board of trustees of the university system, who has received a salary increase of four thousand dollars per annum or more during the last twelve months and has not changed classification shall be excluded from this salary increase.

CHAPTER 2
(Com. Sub. for H. B. 212—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed June 27, 1990; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriation of public moneys, as specified, out of the treasury with insertion thereof into appropriation accounts, as specified, and with all necessary adjustments of increase of items and language of appropriation in such specified accounts; supplementing and amending chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 4190, chapter ten, acts of the Legislature,
regular session, one thousand nine hundred ninety, known as the budget bill, be added, supplemented and amended by the items and language of appropriation to such extent as set forth herein, with all other items and language of appropriation of such accounts, as set forth in the budget bill, to remain unchanged and unaffected, to read as follows:

**TITLE II—APPROPRIATIONS.**

**Section 8. Appropriations from surplus revenue.**

173a—Consolidated Medical Services Fund

Acct. No. 4190

1 Special Supplementary
2 Food Program for Women,
3 Infants and Children ............... $ 400,000

The purpose of this supplementary appropriation bill is to appropriate public money, as specified (general revenues), with insertion of such moneys into accounts in the budget bill and specified items thereof, together with all adjustments of increase required. These public moneys, as newly provided for, shall be available for such use and expenditure upon passage of the bill and in fiscal year 1990-91, supplementing the budget bill for such fiscal year earlier enacted.

---

**CHAPTER 3**

(S. B. 11—By Senators Burdette, Mr. President, and Harman, By Request of the Executive)

[Passed June 25, 1990; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, to the West Virginia Department of Transportation, Division of Motor Vehicles, Account No. 6710, supplementing chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.
Be it enacted by the Legislature of West Virginia:

That the total appropriations from the State Road Fund to the West Virginia Department of Transportation, Division of Motor Vehicles, Account No. 6710, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.
2 
3 Section 5. Appropriations from other funds.
4 158—Division of Motor Vehicles
5 (WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)
6 Acct. No. 6710
7 TO BE PAID FROM STATE ROAD FUND
8 1 Personal Services........... $ — $ 150,000
9 The purpose of this supplementary appropriation bill
10 is to supplement this account and the existing line item
11 therein for expenditure in fiscal year 1990-91. These
12 public moneys, as newly provided for, shall be available
13 for such use and expenditure upon passage of the bill
14 and in fiscal year 1990-91, supplementing the budget
15 bill for such fiscal year earlier enacted.

CHAPTER 4

(S. B. 13—By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)

[Passed June 27, 1990; in effect from passage. Approved by the Governor.]
amending chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That specified items of Account Nos. 8311-10, 8311-26, 8311-31, 8311-32, 8311-34, 8324-26, 8329-07, 8350 and 8540, as found in chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented, amended, reduced and transferred by the items and language of appropriation to such extent as set forth herein, to read as follows:

1

TITLE II—APPROPRIATIONS.

2

Section 5. Appropriations from other funds.

3

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

4 126—Division of Natural Resources—

Groundwater Planning

(WV Code Chapter 20)

Acct. No. 8311-10

TO BE PAID FROM SPECIAL REVENUE FUND

10 1 Personal Services ........ $ — $ 55,678

11 2 Annual Increment ........ — — 0 —

12 3 Employee Benefits ....... — 16,685

13 4 Current Expenses ........ — — 0 —

14 5 Repairs and Alterations — — 0 —

15 6 Equipment ................ — — 0 —

16 6a Unclassified ............. — 230,297

17 7 Total .................... $ — $ 302,660

1 127—Division of Natural Resources—

Hazardous Waste Emergency and Response Fund

(WV Code Chapter 20)

Acct. No. 8311-26

TO BE PAID FROM SPECIAL REVENUE FUND

6 1 Personal Services ........ $ — $ 350,000
<table>
<thead>
<tr>
<th></th>
<th>128—Division of Natural Resources—</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Solid Waste Reclamation and Environmental Response Fund</td>
</tr>
<tr>
<td>2</td>
<td>(WV Code Chapter 20)</td>
</tr>
<tr>
<td>3</td>
<td>Acct. No. 8311-31</td>
</tr>
<tr>
<td>4</td>
<td>TO BE PAID FROM SPECIAL REVENUE FUND</td>
</tr>
<tr>
<td>7</td>
<td>1  Personal Services ........ $ — $ 77,844</td>
</tr>
<tr>
<td>8</td>
<td>2  Employee Benefits ....... — 23,353</td>
</tr>
<tr>
<td>9</td>
<td>3  Current Expenses ........ — 0—</td>
</tr>
<tr>
<td>10</td>
<td>4  Repairs and Alterations — —0—</td>
</tr>
<tr>
<td>11</td>
<td>5  Equipment .............. — —0—</td>
</tr>
<tr>
<td>12</td>
<td>5a Unclassified ............ — 638,999</td>
</tr>
<tr>
<td>13</td>
<td>6  Total .................. $ — $ 740,196</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>129—Division of Natural Resources—</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Solid Waste Enforcement Fund</td>
</tr>
<tr>
<td>2</td>
<td>(WV Code Chapter 20)</td>
</tr>
<tr>
<td>3</td>
<td>Acct. No. 8311-32</td>
</tr>
<tr>
<td>4</td>
<td>TO BE PAID FROM SPECIAL REVENUE FUND</td>
</tr>
<tr>
<td>6</td>
<td>1  Personal Services ........ $ — $ 1,514,740</td>
</tr>
<tr>
<td>7</td>
<td>2  Annual Increment ...... — 8,892</td>
</tr>
<tr>
<td>8</td>
<td>3  Employee Benefits ....... — 457,090</td>
</tr>
<tr>
<td>9</td>
<td>4  Current Expenses ........ — 0—</td>
</tr>
<tr>
<td>10</td>
<td>5  Repairs and Alterations — —0—</td>
</tr>
<tr>
<td>11</td>
<td>6  Equipment .............. — —0—</td>
</tr>
<tr>
<td>12</td>
<td>6a Unclassified ............ — 218,128</td>
</tr>
<tr>
<td>13</td>
<td>7  Total .................. $ — $ 2,198,850</td>
</tr>
</tbody>
</table>
### Appropriations

**130—Division of Natural Resources—**

**Leaking Underground Storage Tanks**

(WV Code Chapter 20)

Acct. No. 8311-34

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$290,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$936</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$87,000</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>$0</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>6a</td>
<td>Unclassified</td>
<td>$73,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$450,936</td>
</tr>
</tbody>
</table>

**132—Division of Natural Resources—**

**Nongame Fund**

(WV Code Chapter 20)

Acct. No. 8324-26

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$67,824</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$216</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$20,347</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>$0</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>$0</td>
</tr>
<tr>
<td>6a</td>
<td>Unclassified</td>
<td>$161,566</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$249,953</td>
</tr>
</tbody>
</table>

**133—Division of Natural Resources—**

**Planning and Development Division**

(WV Code Chapter 20)

Acct. No. 8329-07

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$100,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$2,052</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$30,616</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th></th>
<th>4 Current Expenses</th>
<th>- 0-</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>- 0-</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>- 0-</td>
</tr>
<tr>
<td>6a</td>
<td>Unclassified</td>
<td>58,856</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$191,524</td>
</tr>
</tbody>
</table>

### 141—Water Resources Board

(WV Code Chapter 20)

Acct. No. 8540

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>$-0-</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Annual Increment</td>
<td>- 0-</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>- 0-</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>- 0-</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$-0-</td>
</tr>
</tbody>
</table>

### 151—Division of Public Safety—Inspection Fees

(WV Code Chapter 15)

Acct. No. 8350

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>$480,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Annual Increment</td>
<td>2,160</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>137,956</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>30,000</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>93,070</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$743,186</td>
</tr>
</tbody>
</table>

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

None of the amount of appropriation for Equipment shall be expended for motor vehicles.

The purpose of this supplementary appropriation bill is to appropriate public money, as specified, with insertion of such moneys into accounts in the budget bill.
and specified items thereof, together with adjustments of increase, reduction or transfer required. These public moneys, as newly provided for, shall be available for such use and expenditure upon passage of the bill and in fiscal year 1990-91, supplementing the budget bill for such fiscal year earlier enacted.

CHAPTER 5

(S. B. 14—By Senators Burdette, Mr. President, and Harman, By Request of the Executive)

[Passed June 26, 1990: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, seven, eight, nine, thirteen and fifteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the repeal of administrative adjudications under the charitable solicitation act and the establishment of circuit court actions in lieu thereof; allowing secretary of state to seek injunctive reliefs, clarifying exemption status of political party executive committees; and clarifying the notice on solicitation materials.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-3. Commission on charitable organizations; powers and duties.
§29-19-6. Certain persons and organizations exempt from registration.
§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.
§29-19-3. **Commission on charitable organizations; powers and duties.**

(a) The commission on charitable organizations, herein referred to as the "commission", consists of seven members, including the secretary of state or his or her designate, who shall be the chairman, the attorney general or his or her designate, the commissioner of human services or his or her designate, the director of the state department of health or his or her designate, and three members to be appointed by the governor who shall serve at his will and pleasure.

(b) The commission shall serve as body advisory to the secretary of state and, as such, shall have the following powers and duties:

1. To hold investigations as provided in section fifteen of this article;
2. To advise and make recommendations to the secretary of state on policies and practices to effect the purposes of this article;
3. To request that the attorney general, and, when appropriate, the prosecuting attorney of any county, take action to enforce this article or protect the public from any fraudulent scheme or criminal act; and
4. To meet at the request of the secretary of state or pursuant to regulations promulgated by him. Minutes of each meeting shall be public records and filed with the secretary of state.

(c) The secretary of state shall administer this article, prescribe forms for registration or other purposes, and promulgate rules and regulations in furtherance of this article in accordance with the provisions of chapter twenty-nine-a of this code.

§29-19-6. **Certain persons and organizations exempt from registration.**

(a) The following charitable organizations shall not be required to file an annual registration statement with the secretary of state:
(1) Educational institutions, the curriculums of which in whole or in part are registered or approved by the state board of education, either directly or by acceptance of accreditation by an accrediting body recognized by the state board of education; and any auxiliary associations, foundations and support groups which are directly responsible to any such educational institutions;

(2) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his or her use;

(3) Hospitals which are nonprofit and charitable;

(4) Organizations which solicit only within the membership of the organization by the members thereof: Provided, That the term “membership” shall not include those persons who are granted a membership upon making a contribution as the result of solicitation. For the purpose of this section, “member” means a person having membership in a nonprofit corporation, or other organization, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and, having bona fide rights and privileges in the organization, such as the right to vote, to elect officers, directors and issues, to hold office or otherwise as ordinarily conferred on members of such organizations;

(5) Religious organizations, churches or any group affiliated with and forming an integral part of these organizations of which no part of the net income inures to the direct benefits of any individual and which have received a declaration of current tax-exempt status from the government of the United States; and

(6) Political party executive committees that are conducting raffles.

(b) The following charitable organizations are exempt from filing an annual registration statement with the secretary of state if they do not employ a professional solicitor or fund-raiser or do not intend to solicit and
receive and do not actually raise or receive contributions from the public in excess of ten thousand dollars during a calendar year:

(1) Local youth athletic organizations: Provided, That such organizations may solicit and receive contributions from the public in excess of ten thousand dollars during a calendar year and still be exempt from filing an annual registration statement;

(2) Community civic clubs;

(3) Community service clubs;

(4) Fraternal organizations;

(5) Labor unions;

(6) Local posts, camps, chapters or similarly designated elements or county units of such elements of bona fide veterans organizations or auxiliaries which issue charters to such local elements throughout the state;

(7) Bona fide organizations of volunteer firemen or auxiliaries;

(8) Bona fide ambulance associations or auxiliaries; and

(9) Bona fide rescue squad associations or auxiliaries.

Charitable organizations which do not intend to solicit and receive in excess of ten thousand dollars, but do receive in excess of that amount from the public, shall file the annual registration statement within thirty days after contributions are in excess of ten thousand dollars.

(c) Every printed solicitation shall include the following statement: "West Virginia residents may obtain a summary of the registration and financial documents from the secretary of state, state capitol, Charleston, West Virginia 25305. Registration does not imply endorsement."


(a) Every written contract or agreement between professional fund-raising counsel and a charitable organization shall be filed with the secretary of state.
within ten days after such contract or agreement is concluded.

(b) Every written contract or agreement between a professional solicitor and a charitable organization shall be filed with the secretary of state within ten days after such agreement is concluded. In the absence of a written contract or agreement between a professional solicitor and a charitable organization, a written statement of the nature of the arrangement to prevail in lieu thereof shall be filed.

(c) Each statement must clearly provide the amount, percentage or other method of compensation to be received by the professional solicitor or professional fund-raising counsel as a result of the contract or arrangement.

(d) For purposes of this section, the total moneys, funds, pledges or other property raised or received shall not include the actual cost to the charitable organization or professional solicitor of goods sold or service provided to the public in connection with the soliciting of contributions.


No charitable organizations subject to this article may solicit funds from the public except for charitable purposes or expend funds raised for charitable purposes for noncharitable purposes.

All registered charitable organizations and their professional fund-raisers and solicitors are required to disclose in writing: (1) The name of a representative of the charitable organization to whom inquiries can be made, (2) the name of the charitable organization, (3) the purpose of the solicitation, (4) upon request of the person solicited, the estimated percentage of the money collected which will be applied to the cost of solicitation and administration or how much of the money collected will be applied directly for the charitable purpose, and (5) the number of the raffle, bingo or other such state permit used for fund-raising.
The disclosure statement shall be conspicuously displayed on any written or printed solicitation. Where the solicitation consists of more than one piece, the disclosure statement shall be displayed on a prominent part of the solicitation materials.

Organizations applying for registration shall be reviewed according to objective standards, including, but not limited to, the following:

(a) Charitable organizations shall include in each solicitation a clear description of programs for which funds are requested and source from which written information is available. Expenditures shall be related in a primary degree to stated purpose (programs and activities) described in solicitations and in accordance with reasonable donor expectations.

(b) Charitable organizations shall establish and exercise controls over fund-raising activities conducted for the organizations' benefit, including written contracts and agreements and assurance of fund-raising activities without excessive pressure.

(c) Charitable organizations shall substantiate a valid governing structure and members shall comply with the provisions for conflict of interest as defined in section twenty-five, article one, chapter thirty-one of this code.

(d) No charitable organization, professional fundraiser or other person soliciting contributions for or on behalf of a charitable organization may use a name, symbol or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.

(a) No person may act as a professional fund-raising counsel or professional solicitor for a charitable organization subject to the provisions of this article, unless he or she has first registered with the secretary of state. Applications for such registration shall be in writing
under oath or affirmation in the form prescribed by the secretary of state and contain such information as he or she may require. The application for registration by professional fund-raising counsel or professional solicitor shall be accompanied by an annual fee in the sum of fifty dollars. A partnership or corporation, which is a professional fund-raising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees. However, the names and addresses of all officers, agents and employees of professional fund-raising counsel and all professional solicitors, their officers, agents, servants or employees employed to work under the direction of a professional solicitor shall be listed in the application.

(b) The applicant shall, at the time of the making of an application, file with and have approved by the secretary of state a bond in which the applicant shall be the principal obligor in the sum of ten thousand dollars and which shall have one or more sureties satisfactory to the secretary of state, whose liability in the aggregate as such sureties will at least equal the said sum and maintain said bond in effect so long as a registration is in effect. The bond shall run to the state for the use of the secretary of state and any person who may have a cause of action against the obligor of said bonds for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. A partnership or corporation which is a professional fund-raising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers and employees.

(c) Each registration shall be valid throughout the state for a period of one year and may be renewed for additional one-year periods upon written application under oath in the form prescribed by the secretary of state and the payment of the fee prescribed herein.

(d) The secretary of state or his or her designate shall examine each application, and if he or she finds it to be in conformity with the requirements of this article and all relevant rules and regulations and the registrant has complied with the requirements of this article and all
relevant rules and regulations, he or she shall approve the registration.


(a) No charitable organization, professional fund-raising counsel or professional solicitor subject to the provisions of this article may use or exploit the fact of registration so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the state.

(b) No person may, in connection with the solicitation of contributions for or the sale of goods or services of a person other than a charitable organization, misrepresent to or mislead anyone by any manner, means, practice or device whatsoever, to believe that the person on whose behalf such solicitation or sale is being conducted is a charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if such is not the fact.

(c) No person may in connection with the solicitation of contributions or the sale of goods or services for charitable purposes represent to or lead anyone by any manner, means, practice or device whatsoever, to believe that any other person sponsors or endorses such solicitation of contributions, sale of goods or services for charitable purposes or approves of such charitable purposes of a charitable organization connected therewith when such other person has not given consent to the use of his or her name for these purposes: Provided, That any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his or her consent to the use of his or her name in said campaign.

(d) No person may make any representation that he or she is soliciting contributions for or on behalf of a charitable organization or shall use or display any emblem, device or printed matter belonging to or associated with a charitable organization for the purpose of soliciting or inducing contributions from the
public without first being authorized to do so by the charitable organization.

(e) No professional solicitor may solicit in the name of or on behalf of any charitable organization unless such solicitor:

(1) Has obtained the written authorization of two officers of such organization, a copy of which shall be filed with the secretary of state. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued; and

(2) Carries such authorization on his or her person when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the secretary of state.


(a) The secretary of state, upon his or her own motion, upon request of the commission, or upon complaint of any person, may, if he or she finds reasonable ground to suspect a violation, investigate any charitable organization, professional fund-raising counsel or professional solicitor to determine whether such charitable organization, professional fund-raising counsel or professional solicitor has violated the provisions of this article or has filed any application or other information required under this article which contains false or misleading statements.

(b) In addition to the foregoing, any person who willfully and knowingly violates any provision of this article, or who shall willfully and knowingly give false or incorrect information to the secretary of state in filing statements or reports required by this article, whether such report or statement is verified or not, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined upon first conviction thereof in an amount not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than six months, or be both
fined and imprisoned, and for the second and any
subsequent offense to pay a fine of not less than five
hundred dollars nor more than one thousand dollars, or
be imprisoned for not more than one year, or be both
fined and imprisoned.

(c) Whenever the secretary of state, attorney general
or any prosecuting attorney has reason to believe that
any charitable organization, professional fund-raising
counsel or professional solicitor is operating in violation
of the provisions of this article, the secretary of state,
attorney general or prosecuting attorney may bring an
action in the name of the state against such charitable
organization and its officers, such professional fund-
raising counsel or professional solicitor or any other
person who has violated this article in the circuit court
of the county wherein the cause of action arises to enjoin
such charitable organization or professional fund-
raising counsel or professional solicitor or other person
from continuing such violation, solicitation or collection,
or from engaging therein or from doing any acts in
furtherance thereof and for such other relief as the court
deems appropriate.

(d) In addition to the foregoing, any charitable
organization, professional fund-raising counsel or
professional solicitor who willfully and knowingly
violates any provisions of this article by employing any
device, scheme, artifice, false representation or promise
with intent to defraud or obtain money or other property
shall be guilty of a misdemeanor, and, upon conviction
thereof, for a first offense, shall be fined not less than
one hundred dollars nor more than five hundred dollars,
or be confined in the county jail not more than six
months, or be both fined and imprisoned; and for a
second and any subsequent offense, shall be fined not
less than five hundred dollars nor more than one
thousand dollars, or confined in the county jail not more
than one year, or be both fined and imprisoned.

At any proceeding under this section, the court shall
also determine whether it is possible to return to the
contributors the contributions which were thereby
obtained.
If the court finds that the said contributions are readily returnable to the original contributors, it may order the money to be placed in the custody and control of a general receiver, appointed pursuant to the provisions of article six, chapter fifty-one of this code, who shall be responsible for its proper disbursement to such contributors.

If the court finds that: (1) It is impossible to obtain the names of over one half the persons who were solicited and in violation of this article, or (2) if the majority of individual contributions was of an amount less than five dollars, or (3) if the cost to the state of returning these contributions is equal to or more than the total sum to be refunded, the court shall order the money to be placed in the custody and control of a general receiver appointed pursuant to the provisions of article six, chapter fifty-one of this code. The general receiver shall maintain this money pursuant to the provisions of article eight, chapter thirty-six of this code.

CHAPTER 6

(Com. Sub. for H. B. 206—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed June 25, 1990; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen-b, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six, article three, chapter forty-eight-a of said code, all relating to domestic relations; child and spousal support, and conforming state law to the requirements of federal law with regard to the enforcement of support obligations.

Be it enacted by the Legislature of West Virginia:

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

Chapter
48. Domestic Relations.
48A. Enforcement of Family Obligations.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15b. Withholding from income on and after November 1, 1990.

(a) On and after the first day of November, one thousand nine hundred ninety, every order entered or modified under the provisions of this article which requires the payment of child support or spousal support shall include a provision for automatic withholding from income of the obligor, in order to facilitate income withholding as a means of collecting support.

(b) Every such order as described in subsection (a) of this section shall contain language authorizing income withholding to commence without further court action, as follows:

(1) The order shall provide that income withholding will begin immediately, without regard to whether there is an arrearage, (A) when a child for whom support is ordered is included or becomes included in a grant of assistance from the division of human services or a similar agency of a sister state for aid to families with dependent children benefits, medical assistance only benefits, or foster care benefits; or (B) when the support obligee has applied for services from the child advocate office or the support enforcement agency of another state or is otherwise receiving services from the child advocate office as provided for in chapter forty-eight-a of this code. In any case where one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or in any case where there is filed with the court a written agreement between the parties which provides for an
alternative arrangement, such order shall not provide
for income withholding to begin immediately.

(2) The order shall also provide that income withhold-
ing will begin immediately upon the occurrence of any
of the following:

(A) When the support payments required by such
order are thirty days or more in arrears if the order
requires payments to be made in monthly installments;

(B) When the support payments required by such
order are twenty-eight days or more in arrears if the
order requires payments to be paid in weekly or bi-
weekly installments;

(C) When the obligor requests the child advocate
office to commence income withholding; or

(D) When the obligee requests that such withholding
begin, if the request is approved by the court in
accordance with procedures and standards established
by rules and regulations promulgated by the director of
the child advocate office.

(c) For the purposes of this section, the number of
days support payments are in arrears shall be consi-
dered to be the total cumulative number of days during
which payments required by a court order have been
delinquent, whether or not such days are consecutive.

(d) The supreme court of appeals shall make availa-
ble to the circuit courts standard language to be
included in all such orders, so as to conform such orders
to the applicable requirements of state and federal law
regarding the withholding from income of amounts
payable as support.

(e) Every support order entered by a circuit court of
this state prior to the first day of November, one
thousand nine hundred ninety, shall be considered to
provide for an order of income withholding, by operation
of law, which complies with the provisions of this
section, notwithstanding the fact that such support
order does not in fact provide for such order of
withholding.
CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-6. Investigations of support orders; notice and hearing upon modifications; petition for change.

(a) In every case in which a final judgment containing a child support order has been entered in a domestic relations matter, the children's advocate shall, once every three years or upon receipt of a written request from an obligee or an obligor made not more than once by a party each two years, examine the records and conduct any investigation considered necessary to determine whether the child support amount should be increased or decreased in view of a temporary or permanent change in physical custody of the child which the court has not ordered, increased need of the child or changed financial conditions, unless:

(1) If a child is being supported, in whole or in part, by assistance payments from the division of human services, the children's advocate has determined that such a review would not be in the best interests of the child and neither parent has requested a review;

(2) In the case of any other order, neither parent has requested a review.

(b) The office shall notify both parents of their right to request a review of a child support order, and shall give each parent at least thirty days' notice before commencing any review, and shall further notify each parent, upon completion of a review, of the results of the review, whether of a proposal to petition to seek modification or of a proposal that there should be no change.

(c) If the result of the review is a proposal to petition to seek modification, then each parent shall be given thirty days' notice of the hearing on the petition, the notice to be directed to the last known address of each party by first class mail.
If the result of the review is a proposal that there be no change, then any parent disagreeing with that proposal may, within thirty days of the notice of the results of the review, file with the court a petition for modification setting forth in full the grounds therefor.

(d) The office shall petition the court for modification of the amount of a child support order if modification is determined to be necessary under subsection (a). A written report and recommendation shall accompany the petition.

(e) As used in this section, “changed financial conditions” means increases or decreases in the resources available to either party from any source. Changed financial conditions includes, but is not limited to, the application for or receipt of any form of public assistance payments, unemployment compensation and workers’ compensation.

CHAPTER 7
(S. B. 15—By Senators Burdette, Mr. President, and Harman, By Request of the Executive)

[Passed June 27, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, twenty and twenty-three, article five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five by adding thereto six new sections, designated sections four-b, four-c, twenty-four, twenty-five, twenty-six and twenty-seven, all relating to the abolishment of the emergency services advisory council and the creation of a disaster recovery board; its members, terms, meetings, officers, qualifications, compensation, vacancies, quorums, powers and duties; providing definitions; providing for the creation of a disaster recovery trust fund; providing for acceptance and disbursement of assets and funds from said fund; providing for investments of funds; providing for a semi-annual report by the director relating to certain disaster prevention
measures; providing a tax exemption for the disaster recovery trust fund; providing permissible uses of funds and assets of the disaster recovery trust fund; providing for an annual report; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EMERGENCY SERVICES.


§15-5-4. West Virginia disaster recovery board created; organization of board; appointment of board members; term of office and expenses of board members; meetings.

§15-5-4b. West Virginia disaster recovery board to disburse funds from recovery fund.

§15-5-4c. Powers and duties of the West Virginia disaster recovery board.

§15-5-20. Disaster prevention.

§15-5-23. Severability; conflicts.

§15-5-24. Disaster recovery trust fund; use of funds of authority.

§15-5-25. Prohibition on funds inuring to the benefit of or being distributable to members, officers or private persons.


1 As used in this article:

2 (a) "Emergency services" means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage or other natural or other man-made causes. These functions include, without limitation, firefighting services, police services, medical and health services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services,
emergency transportation, existing or properly assigned
functions of plant protection, temporary restoration of
public utility services and other functions related to
civilian protection, together with all other activities
necessary or incidental to the preparation for and
carrying out of the foregoing functions. Disaster
includes the imminent threat of disaster as well as its
occurrence and any power or authority exercisable on
account of a disaster may be exercised during the period
when there is an imminent threat thereof;

(b) "Local organization for emergency services"
means an organization created in accordance with the
provisions of this article by state or local authority to
perform local emergency service function;

(c) "Mobile support unit" means an organization for
emergency services created in accordance with the
provisions of this article by state or local authority to
be dispatched by the governor to supplement local
organizations for emergency services in a stricken area;

(d) "Political subdivision" means any county or
municipal corporation in this state;

(e) "Board" means the West Virginia disaster recov-
ery board created by this article;

(f) "Code" means the code of West Virginia, one
thousand nine hundred thirty-one, as amended;

(g) "Community facilities" means a specific work or
improvement within this state or a specific item of
equipment or tangible personal property owned or
operated by any political subdivision or nonprofit
corporation and used within this state to provide any
essential service to the general public;

(h) "Disaster" means the occurrence or imminent
threat of widespread or severe damage, injury, or loss
of life or property resulting from any natural or man-
made cause, including fire, flood, earthquake, wind,
snow, storm, chemical or oil spill or other water or soil
contamination, epidemic, air contamination, blight,
drought, infestation or other public calamity requiring
emergency action;
(i) "Disaster recovery activities" means activities undertaken prior to, during or following a disaster to provide, or to participate in the provision of, emergency services, temporary housing, residential housing, essential business activities and community facilities;

(j) "Emergency services" means the preparation for and the carrying out of all emergency functions to prevent, minimize and repair injury and damage resulting from a disaster, including, without limitation, fire-fighting services, police services, medical and health services, communications, evacuation of persons and property from stricken areas, welfare services, transportation, temporary restoration of public utility services, and other functions related to the health, safety and welfare of the citizens of this state, together with all other activities necessary or incidental to the preparation for and the carrying out of the foregoing functions;

(k) "Essential business activities" means a specific work or improvement within this state or a specific item of equipment or tangible personal property used within this state by any person to provide any essential goods or service deemed by the authority to be necessary for recovery from a disaster;

(l) "Person" means any individual, corporation, voluntary organization or entity, partnership, firm or other association, organization or entity organized or existing under the laws of this or any other state or country;

(m) "Recovery fund" means the West Virginia disaster recovery trust fund created by this article;

(n) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but not limited to, facilities for temporary housing and emergency housing, and such other non-housing facilities as may be incidental or appurtenant thereto; and
(o) "Temporary housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or housing for victims of a disaster and such other nonhousing facilities as may be incidental or appurtenant thereto.

§15-5-4. West Virginia disaster recovery board created; organization of board; appointment of board members; term of office and expenses of board members; meetings.

(a) There is hereby created the West Virginia disaster recovery board. The board shall advise the governor and the director on all matters pertaining to emergency services and to perform such other duties as set forth in this article. The board shall be composed of nine members, seven of whom shall be appointed by the governor by and with the advice and consent of the Senate, and one of whom shall be the governor or his or her designee, who shall be chairman of the board and one of whom shall be the secretary of the department of public safety or his or her designee. The successor of each such appointed member shall be appointed in the same manner as the original appointments were made. No more than four of the appointed board members shall at any one time belong to the same political party: Provided, That each congressional district of this state shall be represented by a member of the board.

(b) The provisions of this subsection apply to the seven members appointed by the governor. They shall be appointed for overlapping terms of three years and until their respective successors have been appointed and have qualified. For the purpose of original appointments, three members shall be appointed for a term of three years, two members shall be appointed for a term of two years, and two members shall be appointed for a term of one year. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath prescribed by section five, article
four of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Members shall receive no compensation for the performance of their duties as members, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties.

(c) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman. No vacancy or absence in the membership of the board shall impair the rights of a quorum by a vote of the majority participating in such meeting to exercise all the rights and perform all the duties of the board and the authority.

(d) Upon the occurrence of a disaster requiring immediate action by the board, meetings of the board may be held by telephone conference call or other electronic communications and shall be exempt from the notice requirements of article nine-a, chapter six of this code. Any action taken pursuant to a vote of the board at any such meeting shall not be subject to invalidation by a person adversely affected by such action.

(e) The board shall annually elect one of the appointed members as vice chairman, and shall appoint one of its appointed members as secretary-treasurer. The member appointed as secretary-treasurer shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

(f) All expenses incurred by the board shall be payable solely from funds of the board or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the board beyond the extent to which moneys are available from funds of the board or from such appropriations.

(g) Due to the fact that a natural disaster could strike any part of the state at any time, it is necessary to effectuate a means to immediately implement the provisions of this article. Therefore, until the board has been appointed the governor shall have the authority to:
(1) Accept and expend any private funds and expend no more than one million dollars of the governor's contingency fund for fiscal year one thousand nine hundred ninety to provide disaster relief as authorized in this article for any counties where disasters may occur before the board is appointed; and

(2) Report to the board when it is appointed on moneys expended and actions taken so that the board may include this information in its annual report required by section twelve of this article.

§15-5-4b. West Virginia disaster recovery board to disburse funds from recovery fund.

The board shall have the power, upon its own determination that a disaster has occurred or is about to occur in this state, to disburse funds from the disaster relief recovery trust fund created pursuant to section twenty-four of this article to any person, political subdivision or local organization for emergency services in such amounts and in such manner, and to take such other actions, as the board may determine is necessary or appropriate in order to provide assistance to any person, political subdivision or local organization for emergency services responding to or recovering from the disaster, or otherwise involved in disaster recovery activities.

§15-5-4c. Powers and duties of the West Virginia disaster recovery board.

The board is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes set forth in section four-b of this article. The authority has the power:

(1) To accept appropriations, gifts, grants, bequests and devises from any source, public or private, for deposit into the recovery fund, and to use or dispose of the same to provide assistance to any person, political subdivision or local organization for emergency services responding to or recovering from a disaster, or otherwise involved in disaster recovery activities;
(2) To make and execute contracts, leases, releases and other instruments necessary or convenient for the exercise of its power;

(3) To make, and from time to time, amend and repeal bylaws for the governance of its activities not inconsistent with the provisions of this article;

(4) To sue and be sued;

(5) To acquire, hold and dispose of real and personal property;

(6) To enter into agreements or other transactions with any federal or state agency, political subdivision or person;

(7) To provide for the deposit of any funds or assets of the West Virginia disaster relief recovery trust fund with the state board of investments for investment;

(8) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(9) To use the recovery trust fund to pay the costs incurred by any state department or agency for the purpose of obtaining property appraisals and other certifications necessary to justify the involvement of the federal emergency management agency and to allow its determination of a presidentially declared disaster;

(10) To establish, or assist in the establishment of, temporary housing and residential housing by, with or for political subdivisions declared to be in a disaster area by the federal emergency management agency or other agency or instrumentality of the United States or by the governor of this state;

(11) To enter into purchase, lease, or other arrangements with an agency of the United States or this state for temporary housing or residential housing units to be occupied by disaster victims and make such units available to any political subdivision or persons;

(12) To assist political subdivisions, local organizations for emergency services and nonprofit corporations
in acquiring sites necessary for temporary housing or residential housing for disaster victims and in otherwise preparing the sites to receive and use temporary housing or residential housing units, including payment of transportation charges, by advancing or lending funds available to the board from the recovery fund;

(13) To make grants and provide technical services to assist in the purchase or other acquisition, planning, processing, design, construction, or rehabilitation, improvement or operation of temporary housing or residential housing: Provided, That no such grant or other financial assistance shall be provided except upon a written finding by the board that such assistance and the manner in which it will be provided constitute a disaster recovery activity;

(14) To make or participate in the making of insured or uninsured construction and permanent loans or grants for temporary housing or residential housing, community facilities and essential business activities: Provided, That no such loan or grant shall be made except upon a written finding by the board that the loan or grant and the manner in which it will be provided constitute a disaster recovery activity and that the loan or grant is not otherwise available, wholly or in part, from a private or public lender upon reasonably equivalent terms and conditions; and

(15) Do all acts necessary and proper to carry out the powers granted to the board under this article.

§15-5-20. Disaster prevention.

(a) In addition to disaster prevention measures as included in the state, local, regional and interjurisdictional disaster plans, the governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. At his direction, and pursuant to any other authority and competence they have, state agencies, including, but not limited to, those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public
works, land use and land-use planning and construction standards, shall make studies of disaster prevention-related matters. The governor, from time to time, shall make such recommendation to the Legislature, political subdivisions and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b) At the request of and in conjunction with the office of emergency services, the divisions of energy, natural resources and highways and any state department insured by the board of risk and insurance management shall keep land use and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flooding or other catastrophic occurrences. Such studies shall concentrate on means of reducing or avoiding the dangers caused by such occurrences and the consequences thereof.

(c) In conjunction with the board of risk and insurance management and such other offices or agencies of state government as the board may deem appropriate, the director of the office of emergency services shall make a semi-annual report to the West Virginia disaster recovery board on the existence and location of abandoned motor vehicles, trash, debris and refuse that may in the event of a disaster cause an obstruction to natural water flow and thereby cause excessive and more extensive damage to property. The report shall further set forth a plan to remove and dispose of such trash, debris and refuse within the following semi-annual reporting period.

§15-5-23. Severability; conflicts.

(a) If any section, subsection, subdivision, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this
article is declared to be severable. The Legislature hereby declares that it would have enacted the remaining sections, subsections, provisions, clauses and phrases of this article even if it had known that any section, subsection, subdivision, provision, clause and phrase thereof would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.

(b) The provisions of subsection (a) of this section shall be fully applicable to all future amendments or additions to this article, with like effect as if the provisions of said subsection (a) were set forth in extenso in every such amendment or addition and were reenacted as a part thereof.

§15-5-24. Disaster recovery trust fund; use of funds of authority.

(a) There is hereby created a special trust fund which shall be designated and known as the “West Virginia Disaster Recovery Trust Fund” to be administered by the West Virginia disaster recovery board. The recovery fund shall consist of (i) any appropriations, grants, gifts, contributions or revenues received by the recovery fund from any source, public or private, and (ii) all income earned on moneys, properties and assets held in the recovery fund. When any funds are received by the board from any source, they shall be paid into the recovery fund, and shall be disbursed and otherwise managed in the manner set forth in this article. The recovery fund shall be treated by the auditor and treasurer as a special revenue fund and not as part of the general revenues of the state.

(b) All moneys, properties and assets acquired by the West Virginia disaster recovery board shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and re-used in accordance with the purposes and provisions of this article. Such moneys, properties and assets shall at no time be commingled with other public funds. Disbursements
from the recovery fund shall be made only upon the
written requisition of the chairman accompanied by a
certified resolution of the board. If no need exists for
immediate use or disbursement, moneys, properties and
assets in the recovery fund shall be invested or reinvested by the board as provided in this article.

§15-5-25. Prohibition on funds inuring to the benefit of
or being distributable to members, officers
or private persons.

No portion of the recovery fund shall inure to the
benefit of or be distributable to members of the West
Virginia disaster recovery board or other private
persons except that the board shall be authorized and
empowered to make loans or grants and exercise its
other powers as specified in this article in furtherance
of its purpose: Provided, That no such loans or grants
shall be made to and no property shall be purchased or
leased from, or sold, leased or otherwise disposed of to,
any member or officer of the board except as provided
under subsection (d), section five, article two, chapter
six-b of this code.


The board shall not be required to pay any taxes and
assessments to the state or any political subdivision of
the state upon any of its moneys, properties or assets or
upon its obligations or other evidences of indebtedness
pursuant to the provisions of this article, or upon any
moneys, funds, revenues or other income held or
received by the West Virginia disaster recovery board.


The board shall prepare and transmit to the Legis-
lature annually as of the thirtieth day of June a report
of its disaster recovery activities. The report shall
include the number of requests for distributions, the
number of distributions made and the amount of each
distribution; a listing by source and amount of moneys,
properties and assets that have been contributed to the
recovery fund since the thirtieth day of June of the
preceding year; the outstanding balance of the recovery
AN ACT to amend and reenact sections four, five and nine, article one, chapter five-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article one by adding thereto two new sections, designated sections five-a and five-b; to amend and reenact sections two and five, article one, chapter twenty-two of said code; to further amend said article one by adding thereto a new section, designated section seven-a; and to amend and reenact section one, article four of said chapter twenty-two, relating to transferring and vesting in the public energy authority certain duties and responsibilities of the division of energy to foster, encourage and promote the mineral development industry; continuing the public energy authority; continuing the public energy board; requiring certain members on board be experienced in environmental protection; changing the compensation of members of the board; powers, duties and responsibilities of authority generally; requiring environmental impact statement or assessment under certain circumstances; requiring certain types of notice of certain meetings; requiring public hearing before certain actions of board with respect to project; expenses of authority; division of energy; declaration of legislative findings and policy; qualifications of commissioner; creating advisory board; reclamation board of review; adding two members to board; conflicts of interest affecting eligibility for board or participation in certain matters; and changing the compensation of members of the board.

Be it enacted by the Legislature of West Virginia:

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

Chapter
5D. Public Energy Authority Act.
22. Energy.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

§5D-1-5. Powers, duties and responsibilities of authority generally.

§5D-1-5a. Publication of notice of certain meetings.

§5D-1-5b. Public hearing before final consideration of bond issue or exercise of right of eminent domain.


§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

1 The West Virginia public energy authority heretofore created is hereby continued. 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 are determined to be essential governmental functions and for a public purpose.

8 The authority shall be controlled, managed and
operated by a nine member board known as the West Virginia public energy authority board which is hereby continued. The nine members of the board shall be appointed by the governor, by and with the advice and consent of the Senate. Two members shall be appointed to serve a term of two years; two members shall be appointed to serve a term of three years; two members shall be appointed to serve a term of four years; two members shall be appointed to serve a term of five years; and one member shall be appointed to serve a term of six years. The successor of each such appointed member shall be appointed for a term of five years, except that any 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 board member shall serve until the appointment of his successor. No more than five of the board members shall at any one time belong to the same political party. No more than four members of the board shall be employed by or associated with any industry this authority is empowered to affect. Two members of the board shall be persons who have significant experience in the advocacy of environmental protection. Board members may be reappointed to serve additional terms.

All members of the board shall be citizens of the state. Before entering upon his or her duties, each member of the board 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 board member for cause as provided in article six, chapter six of this code.

Annually the board shall elect one of its members as chairman and another as vice chairman, and shall appoint a secretary-treasurer, who need not be a member of the board. Five members of the board shall constitute a quorum and the affirmative vote of the majority of members present at any meeting shall be necessary for any action taken by vote of the board. No vacancy in the membership of the board shall impair the
rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board 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.

Each member of the board appointed prior to the first day of July, one thousand nine hundred ninety, shall receive an annual salary of six thousand dollars. Each member appointed thereafter shall receive two hundred dollars per diem for each day or portion thereof spent in the discharge of his or her official duties, not to exceed six thousand dollars in any fiscal year. Each member of the board shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duty as a member of such board. All such expenses incurred by the board shall be payable solely from funds of the authority or from funds appropriated to the authority 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 governor, with the advice and consent of the Senate, who shall serve at the governor's will and pleasure, who shall be responsible for managing and administering the daily functions of the authority and for performing any and all other functions necessary or helpful to the effective functioning of the authority, together with all other functions and powers as may be delegated by the board.

§5D-1-5. Powers, duties and responsibilities of authority generally.

The West Virginia public energy authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. 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 rules and regulations to implement and make effective its powers and duties, such rules and regulations to be promul

gated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt and use an official seal and alter the same at pleasure.

(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 this article. Any actions against the authority shall be brought in the circuit court of Kanawha County.

(5) Foster, encourage and promote the mineral development industry.

(6) Represent the state with respect to national initiatives concerning the mineral development industry, and international marketing activities affecting the mineral development industry.

(7) Engage in strategic planning to enable the state to cope with changes affecting or which may affect the mineral development industry.

(8) Acquire, whether by purchase, construction, gift, lease, lease-purchase or otherwise, any electric power project or natural gas transmission project. In the event that an electric power project to be constructed pursuant to this article is designed to utilize coal wastes for the generation of electricity or the production of other energy, such project shall also be capable of using coal as its primary energy input: Provided, That it shall be demonstrated to the authority's satisfaction that quantities of coal wastes exist in amounts sufficient to provide energy input for such project for the term of the bonds or notes issued by the authority to finance the project and are accessible to the project.
(9) Lease, lease with an option by the lessee to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to persons other than governmental agencies, any or all of its electric power projects or natural gas transmission projects for such rentals or amounts and upon such terms and conditions as the public energy authority board may deem advisable.

(10) Finance one or more electric power projects or natural gas transmission projects by making secured loans to persons other than governmental agencies to provide funds for the acquisition, by purchase, construction or otherwise, of any such project or projects.

(11) Issue bonds for the purpose of financing the cost of acquisition and construction of one or more electric power projects or natural gas transmission projects or any additions, extensions or improvements thereto which will be sold, leased with an option by the lessee to purchase, leased or otherwise disposed of to persons other than governmental agencies or for the purpose of loaning the proceeds thereof to persons other than governmental agencies for the acquisition and construction of said projects or both. Such bonds shall be issued and the payment of such bonds secured in the manner provided by the applicable provisions of sections seven, eight, nine, ten, eleven, twelve, thirteen and seventeen, article two-c, chapter thirteen of this code: Provided, That the principal and interest on such bonds shall be payable out of the revenues derived from the lease, lease with an option by the lessee to purchase, sale or other disposition of or from loan payments in connection with the electric power project or natural gas transmission project for which the bonds are issued, or any other revenue derived from such electric power project or natural gas transmission project.

(12) In the event that the electric power project or natural gas transmission project is to be owned by a governmental agency, apply to the economic development authority for the issuance of bonds payable solely from revenues as provided in article fifteen, chapter thirty-one of this code: Provided, That the economic development authority shall not issue any such bonds
except by an act of general law: *Provided, however, That*
the authority shall require that in the construction of
any such project, prevailing wages shall be paid as part
of a project specific agreement which also takes into
account terms and conditions contained in the West
Virginia-Ohio valley market retention and recovery
agreement or a comparable agreement.

(13) 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.

(14) Acquire in the name of the state, by purchase or
otherwise, on such terms and in such manner as it
deems proper, or by the exercise of the right of eminent
domain in the manner provided in chapter fifty-four of
this code, such real property or parts thereof or rights
therein, rights-of-way, property, rights, easements and
interests it deems necessary for carrying out the
provisions of this article, and compensation shall be paid
for public or private lands so taken; and the authority
may sell any of the real property or parts thereof or
rights therein, rights-of-way, property, rights, eas-
ments and interests acquired hereunder in such manner
and upon such terms and conditions as the authority
deems proper: *Provided, That* if the authority deter-
mines that land or an interest therein acquired by the
authority through the exercise of the power of eminent
domain for the purpose of this article is no longer
necessary or useful for such purposes, and if the
authority desires to sell such land or interest therein, the
authority shall first offer to sell such land or interest to
the owner or owners from whom it was acquired, at a
price equal to its fair market value: *Provided, however,
That* if the prior owner or owners shall decline to
reacquire the land or interest therein, the authority
shall be authorized to dispose of such property by direct
sale, auction, or competitive bidding. In no case shall
such land or an interest therein acquired under this
subdivision be sold for less than its fair market value.
This article does not authorize the authority to take or
disturb property or facilities belonging to any public
utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, except for the acquisition of easements or rights-of-way which will not unreasonably interfere with the operation of the property or facilities of such public utility or common carrier, and in the event of the taking or disturbance of property or facilities of public utility or common carrier, provision shall be made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

The term “real property” as used in this article is defined to include lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term, and includes also any and all interests in such property less than full title, such as easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

For the purposes of this section “fair market value” shall be determined by an appraisal made by an independent person or firm chosen by the authority. The appraisal shall be performed using the principles contained in the “Uniform Appraisal Standards for Federal Land Acquisitions” published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972.

(15) 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: Provided, That if any electric power project or natural gas transmission project is to be constructed by a person other than a governmental agency, and with whom the authority has contracted to lease, sell or finance such project upon its completion, then the authority shall not be required to comply with the provisions of article twenty-two, chapter five of this code.
requiring the solicitation of competitive bids for the 
construction of such a project.

(16) Employ managers, superintendents and other 
employees, and retain or contract with consulting 
engineers, financial consultants, accountants, architects, 
attorneys, and such other consultants and independent 
contractors as are necessary in its judgment to carry out 
the provisions of this article, and fix the compensation 
or fees thereof. All expenses thereof shall be payable 
solely from the proceeds of bonds issued by the economic 
development authority, from the proceeds of bonds 
issued by or loan payments, lease payments or other 
payments received by the authority, from revenues and 
from funds appropriated for such purpose by the 
Legislature.

(17) Receive and accept from any federal agency, or 
any other source, grants for or in aid of the construction 
of any project or for research and development with 
respect to electric power projects, natural gas transmis-
sion projects or other energy projects, and receive and 
accept aid or contribution from any source of money, 
property, labor or other things of value to be held, used 
and applied only for the purpose for which such grants 
and contributions are made.

(18) Purchase property coverage and liability insu-
rance for any electric power project or natural gas 
transmission project or other energy project and for the 
principal office and suboffices of the authority, insu-
rance 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 any other insurance which may be 
provided for under a resolution authorizing the issuance 
of bonds or in any trust agreement securing the same.

(19) Charge, alter and collect transportation fees and 
other charges for the use or services of any natural gas 
transmission project as provided in this article.

(20) Charge and collect fees or other charges from any 
energy project undertaken as a result of this article.
(21) When the electric power project is owned and operated by the authority, charge reasonable fees in connection with the making and providing of electric power and the sale thereof to corporations, states, municipalities or other entities in the furtherance of the purposes of this article.

(22) Purchase and sell electricity or other energy produced by an electric power project in and out of the state of West Virginia.

(23) Enter into wheeling contracts for the transmission of electric power over the authority's or another party's lines.

(24) Make and enter into contracts for the construction of a project facility and joint ownership with another utility, and the provisions of this article shall not constrain the authority from participating as a joint partner therein.

(25) Make and enter into joint ownership agreements.

(26) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds issued by the economic development authority pursuant to the provisions of article fifteen, chapter thirty-one of this code or bonds issued by the authority.

(27) Broker the purchase of natural gas for resale to end-users: Provided, That whenever there are local distribution company pipelines already in place the authority shall arrange to transport the gas through such pipelines at the rates approved by the public service commission of West Virginia.

(28) Engage in market research, feasibility studies, commercial research, and other studies and research pertaining to electric power projects and natural gas transmission projects or any other functions of the authority pursuant to this article.

(29) Enter upon any lands, waters and premises in the state for the purpose of making surveys and examinations as it may deem necessary or convenient for the
purpose of this article, and such entry shall not be
demed a trespass, nor shall an entry for such purposes
be deemed an entry under any condemnation proceed-
ings which may be then pending, and the authority shall
make reimbursement for any actual damages resulting
to such lands, waters and premises as a result of such
activities.

(30) Participate in any reorganization proceeding
pending pursuant to the United States Code (being the
act of Congress establishing a uniform system of
bankruptcy throughout the United States, as
amended) or any receivership proceeding in a state or
federal court for the reorganization or liquidation of a
responsible buyer or responsible tenant. The authority
may file its claim against any such responsible buyer or
responsible tenant in any of the foregoing proceedings,
vote upon any question pending therein, which requires
the approval of the creditors participating in any
reorganization proceeding or receivership, exchange
any evidence of such indebtedness for any property,
security or evidence of indebtedness offered as a part of
the reorganization of such responsible buyer or respon-
sible tenant or of any entity formed to acquire the assets
thereof and may compromise or reduce the amount of
any indebtedness owing to it as a part of any such
reorganization.

(31) Make or enter into management contracts with
a second party or parties to operate any electric power
project or any gas transmission project and associated
facilities, or other related energy project, either during
construction or permanent operation.

(32) Do all acts necessary and proper to carry out the
powers expressly granted to the authority in this article.

(33) Nothing herein shall be construed to permit the
transportation of gas produced outside of this state
through a natural gas transmission project.

(34) The authority shall, after consultation with other
agencies of state government having environmental
regulatory functions, promulgate legislative rules
pursuant to chapter twenty-nine-a of this code, to
285 establish standards and principles to be applied to all
286 projects in assessing the effects of projects on the
287 environment: Provided, That when a proposed project
288 requires an environmental impact statement pursuant
289 to the National Environmental Policy Act of 1969, a
290 copy of the environmental impact statement shall be
291 filed with the authority and be made available prior to
292 any final decision or final approval of any project and
293 prior to the conducting of any public hearings regarding
294 the project, and in any such case, no assessment
295 pursuant to the legislative rule need be made.

§5D-1-5a. Publication of notice of certain meetings.
  1 For all meetings of the board at which a bond issue
  2 of the authority will be finally considered, and for all
  3 meetings of the board at which the exercise of the right
  4 of eminent domain will be finally considered, whether
  5 such meeting be a regular or special meeting, the
  6 chairman shall cause a notice of said meeting to be
  7 published as a class II legal advertisement in com-
  8 pliance with the provisions of article three, chapter fifty-
  9 nine of this code and the publication area shall be each
 10 county in which the project is located. In addition, notice
 11 in writing of such meeting shall be given, by regular
 12 United States mail, to any person who shall have
 13 previously made a request, in writing, to be so notified
 14 with regard to a particular project.

§5D-1-5b. Public hearing before final consideration of
bond issue or exercise of right of eminent
domain.
  (a) Prior to any final decision of the board to take
  action with respect to the issuance of revenue bonds or
  to authorize the exercise of the right of eminent domain
  with respect to any electric power or natural gas
  transmission project, the authority shall:
    (1) Prepare and reduce to writing the nature of the
    proposed project, a summary of the data supporting the
    board's determination and a description and location
    identification of the proposed real property, right of
    way, or easement to be acquired. The written statement
    under this section and the environmental impact
statement or assessment required pursuant to section
five of this article shall be available for public inspection
at the office of the county clerk at the county courthouse
of each county in which the project is located during the
two successive weeks before the date of the public
hearing required by this section;

(2) Provide for a public hearing to be held at a
reasonable time and place within at least one county in
which the project is located to allow interested members
of the public to attend the hearing without undue
hardship. Members of the public may be present, submit
statements and testimony and question the authority's
representative appointed pursuant to this section;

(3) Not less than thirty days prior to such public
hearing, provide notice to all members of the Legisla-
ture, unless otherwise notified by a member that such
member does not desire such notice, to the county
commission of each county within which the project is
located and to the municipal council of each municipal-
ity in said county;

(4) Cause to be published a notice of the required
public hearing. The notice shall be published as a class
II legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code and the
publication area shall be each county in which the
project is located. The public hearing shall be held no
earlier than the fourteenth successive day and no later
than the twenty-first successive day following the first
publication of the notice. The notice shall contain the
time and place of the public hearing along with a brief
description of the project and its proposed location;

(5) Cause a copy of the required notice to be posted
at the county seat of each county within which the
project is located for members of the public to observe.
Such notice shall remain posted for two successive
weeks prior to the date of the public hearing;

(6) Appoint a representative of the authority who shall
conduct the required public hearing. The representative
of the authority shall make a report of the public
hearing available for inspection by the public or, upon
written request of any interested person, provide a
written copy thereof and to all individuals previously
receiving written notice of the hearing within thirty
days following the public hearing; and

(7) The representative of the authority conducting the
public hearing shall make the results of the hearing
available to the board for its consideration prior to the
board making decisions regarding the proposed project.

(b) No final action of the board with respect to the
issuance of revenue bonds or authorizing the exercise of
the right of eminent domain with respect to a proposed
project may be made before the thirtieth successive day
following the public hearing required by this section,
but in no event shall final action of the board be made
prior to fifteen days after the report of the public
hearings are made available to the public in general.


1 From time to time the Legislature may appropriate
2 funds to be used for the purposes of this article. All
3 expenses incurred in carrying out the provisions of this
4 article shall be payable solely from funds of the
5 authority or from funds appropriated to the authority
6 for such purpose by the Legislature. Such article does
7 not authorize the authority to incur indebtedness or
8 liability on behalf of or payable by the state.

CHAPTER 22. ENERGY.

Article
4. Reclamation Board of Review.

ARTICLE 1. COMMISSIONER OF ENERGY.

§22-1-2. Declaration of legislative findings and policy.
§22-1-5. Commissioner of energy; appointment; duties; qualifications;
removal; salary; expenses; oath and bond.
§22-1-7a. Advisory board.

§22-1-2. Declaration of legislative findings and policy.

1 The Legislature hereby finds and declares that the
2 mineral development industry is vital to the state's
3 economy and the employment of many of its citizens;
that the division of energy and sections of such division
have heretofore been charged with the dual responsibil-
ity of fostering, encouraging and promoting the mineral
development industry, while at the same time issuing
permits to and regulating the mineral development
industry, and that these roles should not be vested in the
same agency of state government; that the responsibility
for fostering, encouraging and promoting this industry
should be vested in the public energy authority of this
state; that there exists a need to focus upon the
comprehensive regulation of this industry by the
division of energy so as to protect the environment and
promote health and safety within the mineral develop-
ment industry, and a need for the consolidation of
regulatory power and statutes in a single act and under
a single agency of state government with related boards
and commissions; that such consolidation will result in
more efficient administration, avoid unnecessary delays
in permitting and other matters, provide better and
more expeditious enforcement and application of
environmental and safety laws as herein provided, result
in better cooperation between agencies, provide for
uniform policies and consistent treatment of entities
engaged in mineral development; and that such efficient
and uniform administration and regulation will make
this state's industry more competitive with that in other
energy-producing states.

Accordingly, it is hereby declared the public policy of
this state and the purpose of this act:

(a) To effectively regulate the exploration for and the
development, production, utilization and conservation of
coal, oil and gas and other mineral resources of the state
through the fullest practical means, and at the same
time promote economic development in the state, protect
the environment and enhance safety and health in these
vital industries;

(b) To provide a comprehensive program for the
exploration, conservation, development, protection,
enjoyment, recovery and use of coal, oil and gas, and
other mineral resources in this state;
(c) To aid in such a comprehensive program by creating a single department, designated the department of energy, to have the regulatory powers with respect to this industry and to have the general duties and responsibilities heretofore existing in the department of natural resources and department of mines, and that the department will perform such duties and functions in conjunction with the respective boards and commissions which are herein continued in effect;

(d) To expedite and facilitate, consistent with applicable environmental standards, the issuance of permits for mines, surface mining operations, oil and gas wells and other well work; to avoid conflicting permitting requirements and regulations in this state or with federal agencies; and to provide uniform policies with respect to this industry;

(e) To provide for a single agency of this state to implement requirements and programs of federal law affecting the exploration, development, production, recovery and utilization of coal, oil and gas, and other mineral resources in this state;

(f) To provide for an agency of this state which can be consulted with by other agencies of this state prior to the adoption or implementation of rules, regulations, standards, programs or requirements affecting the exploration, development, production, recovery and utilization of coal, oil and gas, and other mineral resources in this state.

§22-1-5. Commissioner of energy; appointment; duties; qualifications; removal; salary; expenses; oath and bond.

The commissioner shall be the chief executive officer of the division of energy. Subject to provisions of law, he shall organize the division into such offices, divisions, agencies and other units of activity as may be found by the commissioner to be desirable for the orderly, efficient and economical administration of the division and for the accomplishment of its objects and purposes. The commissioner may appoint assistants, hearing officers, clerks, stenographers, and other officers and
employees needed for the operation of the division and
may prescribe their powers and duties and fix their
compensation within amounts appropriated therefor.

The commissioner shall have the power to and may
designate the deputy commissioner or other officers or
employees of the division to substitute for him on any
board or commission established under this chapter or
to sit in his place in any hearings, appeals, meetings or
other activities with such substitute having the same
powers, duties, authority and responsibility as the
commissioner. Additionally, the commissioner shall
have the power to delegate to the deputy commissioner,
division directors, section deputies or other personnel,
his powers, duties, authority and responsibility relating
to issuing permits, hiring and training inspectors and
other employees of the division, conducting hearings and
appeals and such other duties and functions set forth in
this chapter or chapters twenty-two-a and twenty-two-
b as he considers appropriate.

The commissioner shall be appointed by the governor
with the advice and consent of the Senate, and shall
serve at the will and pleasure of the governor.

At the time of his initial appointment, the commis-
sioner shall be at least thirty years old and shall be
selected with special reference and consideration given
to his administrative experience and ability, to his
demonstrated interest in the effective and responsible
regulation of the energy industry and the conservation
and wise use of natural resources. The commissioner
shall not be a candidate for or hold any other public
office, shall not be a member of any political party
committee and shall immediately forfeit and vacate his
office as commissioner in the event he becomes a
candidate for or accepts appointment to any other public
office or political party committee.

The commissioner shall receive an annual salary of
sixty-five thousand dollars and shall be allowed and paid
necessary expenses incident to the performance of his
official duties. Prior to the assumption of the duties of
his office, the commissioner shall take and subscribe to
50 the oath required of public officers prescribed by section
51 5, article IV of the constitution of West Virginia and
52 shall execute a bond, with surety approved by the
53 governor, in the penal sum of ten thousand dollars,
54 which executed oath and bond shall be filed in the office
55 of the secretary of state. Premiums on the bond shall be
56 paid from the department funds.

§22-1-7a. Advisory board.
1 On or before the first day of November, one thousand
2 nine hundred ninety, the commissioner shall convene a
3 division of energy advisory board consisting of nine
4 members appointed by the governor, for terms of two
5 years and who shall serve without compensation. Three
6 members of the board shall have significant experience
7 in the energy industry, three members shall have
8 significant experience in the advocacy of environmental
9 protection, one member shall be a representative of
10 organized labor, one member shall be a member of the
11 House of Delegates recommended by the speaker of the
12 House of Delegates, and one member shall be a member
13 of the Senate recommended by the president of the
14 Senate. The commissioner shall serve as an ex officio
15 member and chairman of the board. The advisory board
16 shall meet at least every two months, or upon the call
17 of four members, to discuss all aspects of the division
18 of energy's environmental protection and environmental
19 regulatory functions, collection of penalties and fines,
20 and responsibilities.

ARTICLE 4. RECLAMATION BOARD OF REVIEW.

§22-4-1. Appointment and organization of reclamation
board of review; authority, compensation,
expenses and removal of board members.
1 (a) There is hereby continued a reclamation board of
2 review consisting of seven members to be appointed by
3 the governor with the advice and consent of the Senate.
4 Two members shall be appointed to serve a term of two
5 years. Two members shall be appointed to serve a term
6 of three years. Two members shall be appointed to serve
7 a term of four years. One member shall be appointed
8 to serve a term of five years. The successor of each such
appointed member shall be appointed for a term of five years, except that any 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. Any vacancy in the office of a member of said board shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant. Each vacancy occurring on said board shall be filled by appointment within sixty days after such vacancy occurs. One of the appointees to such board shall be a person who, by reason of his previous vocation, employment or affiliations, can be classed as one capable and experienced in coal mining. One of the appointees to such board shall be a person who, by reason of his training and experience, can be classed as one capable and experienced in the practice of agriculture. One of the appointees to such board shall be a person who, by reason of his training and experience, can be classed as one capable and experienced in modern forestry practices. One of the appointees to such board shall be a person who, by reason of his training and experience, can be classed as one capable and experienced in engineering. One of the appointees to such board shall be a person who, by reason of his training and experience, can be classed as one capable and experienced in water pollution control or water conservation problems. One of the appointees to such board shall be a person with significant experience in the advocacy of environmental protection. One of the appointees to such board shall be a person who represents the general public interest. Not more than four members shall be members of the same political party. During his tenure on the board, no member shall receive significant direct or indirect financial compensation from or exercise any control over any person or entity which holds or has held, within the two years next preceding the member's appointment, a permit to conduct activity regulated by the division of energy, or any similar agency of any other state or of the federal government: Provided, That the member classed as experienced in coal mining, the member classed as experienced in engineering, and the member
classed as experienced in water pollution control or water conservation problems may receive significant financial compensation from regulated entities for professional services or regular employment so long as the professional or employment relationship is disclosed to the board. No member shall participate in any matter before the board related to a regulated entity from which the member receives or has received within the preceding two years direct or indirect financial compensation. For purposes of this section, “significant direct or indirect financial compensation” means twenty percent of gross income for a calendar year received by the member, any member of his or her immediate family, or the member's primary employer.

(b) The board may employ supporting staff including hearings examiners to aid and assist in performing its responsibilities under this article.

(c) Four members shall constitute a quorum and no action of the board is valid unless it has the concurrence of at least four members. The board shall keep a record of its proceedings. Each member shall be paid as compensation for his work as such member, from funds appropriated for such purposes, one hundred dollars per day when actually engaged in the performance of his work as a board member. In addition to such compensation, each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties, 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 state.

(d) Annually, one member shall be elected as chairman and another member shall be elected as vice chairman. Such officers shall serve for terms of one year. The governor may remove any member of the board from office for inefficiency, neglect of duty, malfeasance or nonfeasance, after delivery to such member the charges against him in writing, together with at least ten days' written notice of the time and place at which the governor will publicly hear such member, either in person or by counsel, in defense of the charges against him, and affording the member
such hearing. If such member is removed from office, the governor shall file in the office of the secretary of state a complete statement of the charges made against such member and a complete report of the proceedings thereon. In such case the action of the governor removing such member from office shall be final.

CHAPTER 9

(Com. Sub. for H. B. 201—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed June 27, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and twelve, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the homestead property tax exemption allowable to senior citizens and to persons who are permanently and totally disabled; definitions; amending the requirements, limitations and conditions for the homestead exemption; and specifying that such changes shall apply when determining the measure against which property taxes are levied for the current tax year.

Be it enacted by the Legislature of West Virginia:

That sections two, three and twelve, article six-b, 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 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-2. Definitions.
§11-6B-3. Twenty thousand dollar homestead exemption allowed.
§11-6B-12. Effective date.

§11-6B-2. Definitions.

1 For purposes of this article, the term:

2 (1) “Assessed value” means the value of property as determined under article three of this chapter.
(2) "Claimant" means a person who is age sixty-five or older or who is certified as being permanently and totally disabled, and who owns a homestead that is used and occupied by the owner thereof exclusively for residential purposes.

(3) "Homestead" means a single family residential house, including a mobile or manufactured or modular home, and the land surrounding such structure; or a mobile or manufactured or modular home regardless of whether the land upon which such mobile or manufactured or modular home is situated is owned or leased.

(4) "Owner" means the person who is possessed of the homestead, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust shall be deemed the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title shall also be deemed the owner. Personal property mortgaged or pledged shall, for the purpose of taxation, be deemed the property of the party in possession.

(5) "Permanently and totally disabled" means a person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental condition which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

(6) "Sixty-five years of age or older" includes a person who attains the age of sixty-five on or before the thirtieth day of June following the July first assessment day.

(7) "Used and occupied exclusively for residential purposes" means that the property is used as an abode, dwelling or habitat for more than six consecutive months of the calendar year prior to the date of application by the owner thereof; and that the property is used only as an abode, dwelling or habitat to the exclusion of any commercial use: Provided, That failure to satisfy this six-month period shall not prevent
allowance of a homestead exemption to a former resident in accordance with section three of this article.

(8) "Tax year" means the calendar year following the July first assessment day.

(9) "Resident of this state" means an individual who is domiciled in this state for more than six months of the calendar year.

§11-6B-3. Twenty thousand dollar homestead exemption allowed.

(a) General.—An exemption from ad valorem property taxes shall be allowed for the first twenty thousand dollars of assessed value of a homestead that is used and occupied by the owner thereof exclusively for residential purposes, when such owner is sixty-five years of age or older or is certified as being permanently and totally disabled provided the owner has been or will be a resident of the state of West Virginia for the two consecutive calendar years preceding the tax year to which the homestead exemption relates: Provided, That an owner who receives a similar exemption for a homestead in another state is ineligible for the exemption provided by this section. The owner's application for exemption shall be accompanied by a sworn affidavit stating that such owner is not receiving a similar exemption in another state: Provided, however, That when a resident of West Virginia establishes residency in another state or country and subsequently returns and reestablishes residency in West Virginia within a period of five years, such resident may be allowed a homestead exemption without satisfying the requirement of two years consecutive residency if such person was a resident of this state for two calendar years out of the ten calendar years immediately preceding the tax year for which the homestead exemption is sought. Proof of residency includes, but is not limited to, the owner's voter's registration card issued in this state or a motor vehicle registration card issued in this state. Additionally, when a person is a resident of this state at the time such person enters upon active duty in the military service of this country and throughout such service
maintains this state as his or her state of residence, and
upon retirement from the military service, or earlier
separation due to a permanent and total physical or
mental disability, such person returns to this state and
purchases a homestead, such person is deemed to satisfy
the residency test required by this section and shall be
allowed a homestead exemption under this section if
such person is otherwise eligible for a homestead
exemption under this article; and the tax commissioner
may specify, by regulation promulgated under chapter
twenty-nine-a of this code, what constitutes acceptable
proof of these facts. Only one exemption shall be allowed
for each homestead used and occupied exclusively for
residential purposes by the owner thereof, regardless of
the number of qualified owners residing therein.

(b) Attachment of exemption.—This exemption shall
attach to the homestead occupied by the qualified owner
on the July first assessment date and shall be applicable
to taxes for the following tax year. An exemption shall
not be transferred to another homestead until the
following July first. If the homestead of an owner
qualified under this article is transferred by deed, will
or otherwise, the twenty thousand dollar exemption
shall be removed from the property on the next July
first assessment date unless the new owner qualifies for
the exemption.

(c) Construction.—The residency requirement speci-
ified in subsection (a) is enacted pursuant to the
Legislature's authority to prescribe by general law
requirements, limitations and conditions for the homes-
tead exemption, as set forth in section one-b, article ten
of the constitution of this state. Should the supreme
court of appeals or a federal court of competent
jurisdiction determine that this residency requirement
violates federal law in a decision that becomes final, this
section shall then be construed and applied, beginning
with the July first assessment day immediately follow-
ing the date the decision became final, as if the
residency requirement had not been enacted, thereby
preserving the availability of the homestead exemption
and the fiscal integrity of local government levying bodies.

§11-6B-12. Effective date.

(a) The provisions of this article enacted in the year one thousand nine hundred eighty-one took effect on the first day of July, one thousand nine hundred eighty-one.

(b) Amendments to this article enacted in the year one thousand nine hundred ninety shall, regardless of the effective date of this act, be used to determine the assessed value of property on which ad valorem property taxes are levied for tax years beginning on or after the first day of January, one thousand nine hundred ninety. Assessors and county commissioners are hereby authorized and directed to review the claims for homestead exemption for the current tax year filed in their counties prior to the second day of October, one thousand nine hundred eighty-nine, and to make such changes in their books for the current tax year as may be needed to give these amendments their intended effect, regardless of any other provision in this chapter that may prohibit such action. Any person who has already paid property taxes for tax year one thousand nine hundred ninety, and who is considered eligible for homestead exemption under this article, may apply pursuant to section twenty-seven, article three of this chapter for a refund for property taxes erroneously paid.

CHAPTER 10

(S. B. 5—By Senators Burdette, Mr. President, and Harman, By Request of the Executive)

[Passed June 27, 1990; in effect July 1, 1990. Approved by the Governor.]

AN ACT to amend and reenact sections nineteen and twenty-two-c, article ten, 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 a new section, designated section fifty-four, all relating to retirement; requiring certain information to
be filed by employers; providing legislative findings; defining the term "contract"; prohibiting retirants under the early retirement incentive program from accepting work on a contract basis with the state or any of its political subdivisions; providing for exceptions; allowing persons who are elected or appointed to government positions and who do not receive any income from such positions to continue to receive incentive annuities under the public employees retirement system; authorizing the promulgation of rules; and establishing a procedure for termination of benefits.

Be it enacted by the Legislature of West Virginia:

That sections nineteen and twenty-two-c, article ten, 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 a new section, designated section fifty-four, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-19. Employers to file information as to employees' service.

§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

§5-10-54. Termination of benefits; procedure.

§5-10-19. Employers to file information as to employees' service.

1 Each participating public employer shall file with the board of trustees, in such form as the board shall from time to time prescribe, a detailed statement of all service rendered to participating public employers by each of its employees and by any retirant who retired under section twenty-two-c of this article and who is working for the employer on a contract basis, as defined in section twenty-two-c of this article, and such other information as the board shall require in the operation of the retirement system.
§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

The Legislature hereby finds and declares that a compelling state interest exists in providing a temporary early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active contributing members of this retirement system on the first day of April, one thousand nine hundred eighty-eight, in the reduction of the number of such employees and in reduction of governmental costs therefor; that such program constitutes a public purpose; and that the special classifications and differentiations provided in respect of such program are reasonable and equitable ones for the accomplishment of such purpose and program as enacted in Enrolled Committee Substitute for H. B. No. 4672, regular session, one thousand nine hundred eighty-eight, and as clarified and supplemented herein, retroactive to such beginning date, aforesaid. The Legislature further finds that maintaining an actuarially sound retirement fund is a necessity and that the reemployment of persons who retire under this section in any manner, including reemployment on a contract basis, is contrary to the intent of the early retirement program and severely threatens the fiscal integrity of the retirement fund.

(a) For the purposes of this section, the term “contract” means any personal service agreement, not involving the sale of commodities, that cannot be performed within sixty days or that exceeds two thousand five hundred dollars in any twelve month period. The term “contract” does not include any agreement obtained by a retirant through a bidding process and which is for the furnishing of any commodity to a government agency.

(b) Beginning on the first day of April, one thousand
nine hundred eighty-eight, and continuing through the thirty-first day of December, one thousand nine hundred eighty-eight (or as extended by eligibility qualification requirement, as hereinafter specified), eligible members, being those active, contributing members actually and currently employed on such beginning date, retiring pursuant to this section, and from any state, county or municipal position, covered under the two divisions of this retirement system (the state division and the public employer, nonstate division) including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for taking deferred retirement (but not disability retirees) may elect to participate in this incentives program and may elect any one of the three following incentive options:

(1) Retirement incentive option one:

For the purpose of computing the member's annuity, the normal final average salary shall be computed and one-eighth thereof shall be added thereto in arriving at the true final average salary for use in actual computation of retirement benefit.

(2) Retirement incentive option two:

A member may elect a lump sum payment, in addition to his regular retirement annuity, equal to ten percent of his final average salary not to exceed five thousand dollars, and in the case of a deferred retirement electing this option, such lump sum payment shall be receivable and deferred to the time of receipt of such deferred retirement annuity.

(3) Retirement incentive option three:

A person shall be credited with an additional two years of contributing service and an additional two years of age. The years credited under this option shall in no way add to a member's final average salary factor of computation.

Active, contributing members who desire to retire under this section but who are unable to retire by the thirty-first day of December, one thousand nine hundred eighty-eight, and make use of the incentive retirement
program because an element of eligibility for retirement, such as age or other element, will not be met until a date after the thirty-first day of December, one thousand nine hundred eighty-eight, and before the first day of July, one thousand nine hundred eighty-nine, shall be permitted to postpone actual retirement until the date of fulfilling such element of eligibility and shall retire on such date, before the temporary retirement incentive program ends on the thirtieth day of June, one thousand nine hundred eighty-nine; with proper credit to be granted for such extended period: Provided, That they shall have made application for retirement, including choice of their respective option, and given notice to their respective employer by the thirty-first day of December, one thousand nine hundred eighty-eight, although postponing actual retirement, as aforesaid.

(c) Any member participating in this retirement incentive program is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from the state or any of its political subdivisions: Provided, That the executive director may approve, upon written request and for good cause shown, an exception allowing a retirant to perform work on a contract basis. The executive director shall report all approved exceptions to the board of trustees: Provided, however, That a person may retire under this section and thereafter serve in an elective office: Provided further, That he shall not receive an incentive option under this section during the term of service in said office, but shall receive his or her annuity calculated on regular basis, as if originally taken not under this section but on such regular basis. At the end of such term and cessation of service in such office during which the member shall rejoin and reenter the retirement system and pay contributions therefor, such regular annuity shall be recalculated and an increased annuity due to such additional employment shall be granted and computed on regular basis and in similar manner as under section forty-eight of this article. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and
thereafter serving in such appointive office shall not receive an incentive option under this section during the term of service in said office, but the same shall be suspended during such period: And provided further, That at the end of such term and cessation of service in such appointive office the incentive option provided for under this section shall be resumed: And provided further, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he may be entitled to by virtue of service in such office and who does not receive any income therefrom except such reimbursement of out-of-pocket costs and expenses as may be permitted by the statutes governing such office shall continue to receive an incentive option under this section. Such service shall not be counted as contributed or credited service for purposes of computing retirement benefits.

In any event, an eligible member may retire under this section and thereafter continue to receive his incentive annuity and be employed as a substitute teacher or as adjunct faculty.

Any such incentive retirants, under this section, may not thereafter receive such annuity and enter or reenter any governmental retirement system established or authorized to be established by the state, notwithstanding any provision of the code to the contrary, unless required by constitutional provision or as hereby specifically permitted to those retiring and thereafter serving in elective office, as aforesaid.

The additional annuity allowed for temporary early retirement under these options, in respect of state division retirants of this system, is intended to be paid from the retirement incentive account hereby created as a special account in the state treasury and from the funds therein established with moneys required to be transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect of such positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys
actually saved in a particular fiscal year shall constitute
the fund source for payment of such additional annuity,
the funds of the retirement system to be used for
payment of the base annuity under the early retirement
incentive program: Provided, That such additional
annuity shall be paid from the unused portion of both
salary and fringe benefits and with any remainder of
any fringe benefit moneys, as such, to remain with the
spending unit and any remainder of salary, as such, to
be directed as additional funding to the teachers
retirement system and as a part of the assets thereof.
No such additional annuity shall be disallowed even
though initial receipts may not be sufficient, with funds
of the system to be applied for such purpose, as for the
base annuity. With respect to public employer division
retirants (nonstate division retirants of the system), such
incentive annuity shall be paid from the nonstate
division funds of the system.

(d) The executive secretary of the retirement system
shall provide forms for applicants. Such forms shall
include a detailed description of the incentive plan
options.

The executive secretary of the retirement system shall
file a report to the Legislature no later than the fifteenth
day of February, one thousand nine hundred eighty-
nine, and quarterly thereafter, detailing the number of
retirees who have elected to accept early retirement
incentive options, the dollar cost to date by option
selected, and the projected annual cost through the year
two thousand.

(e) Within every spending unit, department, board,
corporation, commission, or any other agency or entity
wherein two or multiples of two members elect to retire
either under the temporary early retirement incentives
set forth above, or under regular, voluntary retirement,
and countable on an agency-wide or entity-wide basis,
no more than one of such vacated positions may be filled,
with the second position being abolished upon the
effective day of the member's retirement. The vacant
position abolitionment requirement shall not apply to
elective positions or appointed public officers whose
positions are established by state constitutional or statutory provision. The retirant's employing entity shall decide as to which of the vacated positions made available through special early retirement or through regular, voluntary retirement are to be abolished and the head of such spending unit shall immediately notify the state auditor, the legislative auditor, and the commissioner of the department of finance and administration of the decisions and shall then apply and/or transfer the remaining salary and fringe benefits as aforesaid: Provided, That this vacant position abolishment provision shall not apply to any county or municipal position except those under the authority of a county board of education, nor to any position or positions, whether designated by spending unit, department, agency, commission, entity or otherwise, which the governor in respect of the executive branch, or the chief justice of the supreme court of appeals in respect of the judicial branch, or the president of the Senate or speaker of the House of Delegates, in respect of the legislative branch, may exempt or amend, under such abolishment provision, upon his respective recommendation that such exemption or amendment is necessary to provide for continuity of governmental operation or to preserve the health, welfare or safety of the people of West Virginia, and with the prior concurrence of the joint committee on government and finance in such recommendation, after the chairmen thereof shall cause such committee to meet.

(f) Special rule of eighty.—Any active, contributing member of the retirement system as of the first day of April, one thousand nine hundred eighty-eight, who selects one of the incentive options in this section, may retire under the special early retirement provisions with full pension rights, without reduction of benefits if the sum of such member's age plus years of contributing service equals or exceeds eighty: Provided, That such person has at least twenty years of contributing service; up to two years of which may be military service, or prior service, or any combination thereof not exceeding an aggregate of two years.
(g) **Termination of temporary retirement incentives program.**—The right to elect, choose, select or use any of the options, special rule of eighty, or other benefits set forth in this section shall terminate on the thirtieth day of June, one thousand nine hundred eighty-nine.

(h) The board shall promulgate rules and regulations in accordance with the provisions of article three, chapter twenty-nine of this code regarding the calculation of the amount of incentive option that may be forfeited pursuant to the provisions of subsection (b) of this section.

§5-10-54. **Termination of benefits; procedure.**

Whenever the board determines that any person has knowingly made any false statement or falsified or permitted to be falsified any record or records of the retirement system in an attempt to defraud the system, the board shall terminate any benefit that person has received, is receiving and is entitled to receive under this article. Any termination of benefits may be appealed pursuant to the state administrative procedures act in chapter twenty-nine-a of this code. The board shall promulgate rules and regulations regarding the procedure for termination of benefits in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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**CHAPTER 11**

(Com. Sub. for H. B. 204—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed June 27, 1990; in effect from passage. Approved by the Governor.]  

AN ACT to amend and reenact section one, article two-g, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to federal “WIC” program; requiring banks in the state to accept WIC vouchers or coupons or drafts from
vendors; requiring director of health to deposit WIC funds in state bank, authorizing advance payments from such funds, providing for method of selection of bank; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That section one, article two-g, 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 2G. SPECIAL SUPPLEMENTARY FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC).

§16-2G-1. Voucher or coupon redemption and payment.

1 With respect to the vouchers or coupons or drafts authorized by the division of health in the administration of the special supplementary food program for women, infants and children, commonly known as the WIC program, under the auspices and guidelines of the United States department of agriculture, such vouchers or coupons or drafts, when received by a vendor from a holder thereof in exchange for food, food stuffs, or authorized goods or services, may be deposited by the vendor in any federally insured bank in this state for collection and payment thereof, and such bank shall accept the same as equivalent to a negotiable instrument from a holder in due course pursuant to chapter forty-six of this code, and shall collect the funds for such vouchers or coupons so received.

All moneys received from the United States department of agriculture under the WIC program, except for moneys to be used for administration, shall be deposited by the director of health in a special account in a federally insured bank in this state, and notwithstanding other provisions of this code to the contrary, this special account shall be funded by the director of health as a special advance payment imprest funds account to be reconciled at least annually by the state treasurer from which said bank can daily make required wire transfers to pay each day’s presentments of vouchers or coupons or drafts. The director of health shall select the bank by competitive bidding in the same manner as the state treasurer selects depository banks for state funds,
subject to applicable federal laws or regulations governing such selection.

The provisions of this section enacted in the year one thousand nine hundred eighty-nine shall take effect on the first day of April, one thousand nine hundred ninety, except that the director shall commence procedures for the selection of the bank and for implementation of the other provisions of this section upon the passage hereof.

Nothing in this section shall make such vouchers or coupons or drafts negotiable instruments for any purpose other than expressly set forth herein or as permitted by applicable federal laws or regulations.

CHAPTER 12

(Com. Sub. for H. B. 213—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed June 27, 1990; in effect July 1, 1990. Approved by the Governor.]
a new section, designated section three, all relating to prospective and retroactive adjustment of premium rates; liens for payments, interest and penalties due and not paid; enforcement of liens; notice provisions for commissioner's exercise of distraint powers; mandatory employer payment into second injury reserve of surplus fund and exceptions; criteria for exceptions; establishment of classes for employers and computation of payments to be made into said second injury reserve by said employers; continuation of existing bond for employers exempted from mandatory participation in said second injury reserve; election of self-insured employer to pay into catastrophe reserve of surplus fund; employer indebtedness to commissioner becoming due and owing upon sale or transfer of business; lien for indebtedness being a personal obligation of employer; commissioner's certificate of good standing; lien against assets purchased by successor employer for indebtedness of predecessor employer to commissioner upon sale or transfer of business; duty of successor employer to verify predecessor employer's good standing with commissioner; waiver by commissioner of successor employer's payment of predecessor employer's indebtedness; publication of notice before waiver issued; hearing upon objection to waiver; circumstances under which successor employer to assume predecessor employer's premium rates; premium rates to be assigned to new corporate employer when new corporate employer is created by officers or shareholders of preexisting corporate employer; required payment of deficiency in payments to commissioner for failure of new corporate employer to make disclosure of relationship with preexisting corporate employer; employer right to object to commissioner's decisions relating to employer's obligations to the commissioner; hearings thereon and appeals; commissioner authority to promulgate rules; subrogation right of commissioner or self-insured employer to recover workers' compensation medical benefits paid from proceeds of recovery from third party tort-feasor; limitations thereon; legislative committee study of applicability of expanded subrogation; employer payment of second injury awards; employer being
credited for overpayments determined by administrative law judge; commissioner's determination in accordance with guidelines of medical services which are reasonably required; review of requests to exceed guidelines; commissioner being authorized to enter into preferred provider agreements; required disclosure of financial interest in sale or rental of medical appliances or devices by referring medical providers; commissioner being authorized to promulgate rules for enforcement of required disclosure; consequences of failure to disclose; criminal penalties for employer who contracts with hospital for treatment of compensable injuries or who requires employee to pay for services rendered by such hospital; criminal penalties for health care providers who, having had the right to receive payment for services related to work-related injuries suspended or terminated by the commissioner, fail to post notice of the suspension or termination or attempt to collect money for such services; establishment of health care advisory panel; compensation for services and expenses; liability insurance for members; duties thereof; development and utilization of guidelines for services, treatment, care and review; suspension or termination of right of certain health care providers to obtain payment for services to injured employees; exception for rendering medical services under emergency circumstances; consultation by commissioner with health care advisory panel being required prior to suspension or termination; procedures for suspension or termination; hearings; appeal; notice to injured employees by suspended or terminated medical provider; circumstances under which injured employee may pay suspended or terminated medical provider directly; commissioner's notification of injured employee of suspension or termination and assistance in obtaining new medical provider; reinstatement of suspended or terminated medical provider; commissioner being required to promulgate rules; exceptions to definitions relating to weekly wages; exception to minimum weekly benefits paid for temporary total disability; definition of part-time employee; computation of benefits for part-time employees; performance of medical examinations and evaluations in accordance
with procedures established by health care advisory panel and exceptions; suspension of temporary total disability benefits during trial return to work; eligibility for said benefits to continue; medical certification of ability to perform work or successful completion of three month trial return to work period resulting in termination of eligibility for said benefits; unsuccessful trial return to work resulting in immediate reinstatement of said benefits; rehabilitation and permanent disability evaluations; employee not otherwise being prevented from returning to work; employee not being required to return to work; provisions relating to trial return to work to terminate on the first day of July, one thousand nine hundred ninety-four; medical examinations being required to follow procedures established by health care advisory panel and exceptions; the filing of objections to findings of occupational pneumoconiosis board with office of judges beginning on the first day of July, one thousand nine hundred ninety-one; administrative law judge being required to rule thereon; physical and vocational rehabilitation; legislative findings; determination of eligibility of injured employee for rehabilitation services; development, payment for and monitoring of rehabilitation plan; computation and payment of temporary partial rehabilitation benefits when employee returns to work under rehabilitation program; commissioner being required to promulgate rules to develop comprehensive rehabilitation program; provisions relating to rehabilitation to terminate on the first day of July, one thousand nine hundred ninety-four; exception for computation of "average weekly wage earnings, wherever earned, of the injured person, at the date of injury"; chief administrative law judge being required to set hearing for and rule upon objections to commissioner's non-medical findings relating to applications for occupational pneumoconiosis benefits; appeals therefrom; increased criminal penalties for fraudulently obtaining workers' compensation benefits; restitution; legislative findings regarding surplus in coal-workers' pneumoconiosis fund; commissioner being directed to conduct audit of said fund and transfer up to two hundred fifty million dollars to workers' compen-
sation fund; expenditures of principal amount transferred being prohibited until all other assets of workers' compensation fund expended; expenditure of interest earned on amount transferred being permitted to satisfy obligations of workers' compensation fund; retention of adequate reserves in coal-workers' pneumoconiosis fund to guarantee payment of all claims; inclusion of all moneys previously transferred from and still due and owing to the coal-workers' pneumoconiosis fund as part of said amount transferred; commissioner being required to transfer such portion of said amount back to coal-workers' pneumoconiosis fund as will meet required standards of federal law for reserves if such standards change; required filing of objections made to decisions of commissioner on and after the first day of July, one thousand nine hundred ninety-one, with office of judges; transfer of all objections pending before the commissioner on or before the thirty-first day of December, one thousand nine hundred ninety-one, to office of judges for final resolution; rulings of administrative law judges upon applications for modification of prior orders and for reopening of claims; factors administrative law judges are to consider when determining whether objections and appeals have been timely filed; settlement of protests to certain permanent partial disability awards; notice to commissioner of intended settlement; participation by commissioner in settlement proceedings; the required filing of joint written memorandum of settlement; the required approval of settlement by administrative law judge; failure to approve settlement being appealable; limitations on amounts of settlement; payment of settlement; settlements being set aside upon finding of fraud, undue influence or coercion; petition to vacate settlement and hearing thereon; final order on petition and appeal therefrom; settlement not affecting future right to benefits; commissioner being permitted to approve settlements of such disputed awards which are pending for resolution before the commissioner; creation of workers' compensation office of administrative law judges within workers' compensation appeal board; appointment of chief administrative law judge; qualifi-
cations therefor; salary for and removal of chief administrative law judge; employment of administrative law judges and other personnel; qualifications for administrative law judges; budget of office of judges being included in budget of appeal board; appeal board being required to promulgate rules of practice and procedure by the first day of May, one thousand nine hundred ninety-one; powers of chief administrative law judge and delegation of powers; filing of objections to commissioner's decisions with office of judges being required after the first day of July, one thousand nine hundred ninety-one; office of judges being required to schedule hearings; notice; commissioner being a party in certain proceedings; commissioner being permitted to appear under certain circumstances; office of judges being required to keep records and make decisions thereon; commissioner being required to provide records to chief administrative law judge; rules of evidence; supplemental hearings; chief administrative law judge being required to conduct hearings and render final rulings on evidence of record; taking appeals therefrom to appeal board; appeal board being required to rule upon appeal; commissioner's right to appeal; filing of notice of appeal with office of judges; notice to other parties; duties of appeal board and administrative law judges; administrative law judge being required to act to prevent delay in determination of disputes; decisions of chief administrative law judge as to jurisdiction to hear dispute being a final, appealable order; inclusion of the termination by an employer of an injured employee off work due to a compensable injury who is receiving or eligible for temporary total disability benefits within the meaning of a discriminatory practice; exceptions; inclusion of the failure to reinstate an employee who has sustained a compensable injury to the employee's former or comparable position of employment, if available, within the meaning of a discriminatory practice; exceptions; medical certification of ability to perform duties; employee right to preferential recall where no position available; duty of employee; civil action being subject to provisions of collective bargaining agreement, arbitrator's decision, administrative or
court order, or federal statute; and employee eligibility for benefits not being affected.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.

2A. Subrogation.

3. Workers' Compensation Fund.

4. Disability and Death Benefits.

4B. Coal-Workers' Pneumoconiosis Fund.

5. Review.

5A. Discriminatory Practices.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-4. Classification of industries; accounts, rate of premiums.

§23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond.

§23-2-9. Election of employer to provide own system of compensation; mandatory participation in second injury reserve of surplus fund and exceptions; election to provide catastrophe coverage.
§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.

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

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

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


§23-2-4. Classification of industries; accounts; rate of premiums.

1 The commissioner shall distribute into groups or classes the employments subject to this chapter, in accordance with the nature of the business and the degree of hazard incident thereto. And the commissioner shall have power, in like manner, to reclassify such industries into groups or classes at any time, and to create additional groups or classes. The commissioner may make necessary expenditures to obtain statistical and other information to establish the classes provided for in this section.

2 The commissioner shall keep an accurate account of all money or moneys paid or credited to the compensation fund, and of the liability incurred and disbursements made against same; and an accurate account of all money or moneys received from each individual subscriber, and of the liability incurred and disbursements made on account of injuries and death of the employees of each subscriber, and of the receipts and incurred liability of each group or class.

20 In compensable fatal and total permanent disability cases, other than occupational pneumoconiosis, the amount charged against the employer's account shall be such sum as is estimated to be the average incurred loss of such cases to the fund. The amount charged against the employer's account in compensable occupational pneumoconiosis claims for total permanent disability or for death shall be such sum as is estimated to be the average incurred loss of such occupational pneumoconiosis cases to the fund.
B
1668 WORKERS' COMPENSATION [Ch. 12

30 It shall be the duty of the commissioner to fix and maintain the lowest possible rates of premiums consistent with the maintenance of a solvent workers' compensation fund and the creation and maintenance of a reasonable surplus in each group after providing for the payment to maturity of all liability incurred by reason of injury or death to employees entitled to benefits under the provisions of this chapter. A readjustment of rates shall be made yearly on the first day of July, or at any time the same may be necessary: Provided, That on and after the first day of July, one thousand nine hundred ninety-one, the commissioner shall, at least thirty days prior to the first day of the quarter to which an adjustment of rates is to be applicable, file a schedule of the readjusted rates with the office of the secretary of state for publication in the state register pursuant to article two, chapter twenty-nine-a of this code: Provided, however, That from the effective date of this section to the thirtieth day of June, one thousand nine hundred ninety-one, the commissioner shall be permitted to retroactively readjust rates to the first day of the quarter within which notice of the readjustment is given. The determination of the lowest possible rates of premiums within the meaning hereof and of the existence of any surplus or deficit in the fund shall be predicated solely upon the experience and statistical data compiled from the records and files in the commissioner's office under this and prior workers' compensation laws of this state for the period from the first day of June, one thousand nine hundred thirteen, to the nearest practicable date prior to such adjustment: Provided further, That any expected future return, in the nature of interest or income from invested funds, shall be predicated upon the average realization from investments to the credit of the compensation fund for the two years next preceding. Any reserves set up for future liabilities and any commutation of benefits shall likewise be predicated solely upon prior experience under this and preceding workers' compensation laws and upon expected realization from investments determined by the respective past periods, as aforesaid.

71 The commissioner may fix a rate of premiums
applicable alike to all subscribers forming a group or class, and such rates shall be determined from the record of such group or class shown upon the books of the commissioner: Provided, That if any group has a sufficient number of employers with considerable difference in their degrees of hazard, the commissioner may fix a rate for each subscriber of such group, such rate to be based upon the subscriber's record on the books of the commissioner for a period not to exceed three years ending December thirty-first of the year preceding the year in which the rate is to be effective; and the liability part of such record shall include such cases as have been acted upon by the commissioner during such three-year period, irrespective of the date the injury was received; and any subscriber in a group so rated, whose record for such period cannot be obtained, shall be given a rate based upon the subscriber's record for any part of such period as may be deemed just and equitable by the commissioner; and the commissioner shall have authority to fix a reasonable minimum and maximum for any group to which this individual method of rating is applied, and to add to the rate determined from the subscriber's record such amount as is necessary to liquidate any deficit in the schedule as to create a reasonable surplus.

It shall be the duty of the commissioner, when the commissioner changes any rate, to notify every employer affected thereby of that fact and of the new rate and when the same takes effect. It shall also be the commissioner's duty to furnish to each employer yearly, or more often if requested by the employer, a statement giving the name of each of the employer's employees who were paid for injury and the amounts so paid during the period covered by the statement.

§23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond.
The commissioner in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment required by this chapter. If judgment is against the employer, such employer shall pay the costs of the action. Civil action under this section shall be given preference on the calendar of the court over all other civil actions.

In addition to the foregoing provisions of this section, any payment, interest and penalty thereon due and unpaid under this chapter shall be a personal obligation of the employer immediately due and owing to the commissioner and shall, in addition thereto, be a lien enforceable against all the property of the employer: Provided, That no such lien shall be enforceable as against a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration without notice, unless docketed as provided in section one, article ten-c, chapter thirty-eight of this code: Provided, however, That such lien may be enforced as other judgment liens are enforced through the provisions of chapter thirty-eight of this code and the same shall be deemed by the circuit court to be a judgment lien for this purpose.

In addition to all other civil remedies prescribed herein the commissioner may in the name of the state, after giving appropriate notice as required by due process, distress upon any personal property, including intangible property, of any employer delinquent for any payment, interest and penalty thereon. If the commissioner has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, upon giving appropriate notice, either before or after the seizure, as is proper in the circumstances, he or she may likewise distress in the name of the state before such delinquency occurs. For such purpose, the commissioner may require the services of a sheriff of any county in the state in levying such distress in the county in which the sheriff is an officer and in which such personal property is situated. A sheriff so collecting any payment, interest and penalty thereon shall be entitled to such compen-
sation as is provided by law for his or her services in
the levy and enforcement of executions.

In case a business subject to the payments, interest
and penalties thereon imposed under this chapter shall
be operated in connection with a receivership or
insolvency proceeding in any state court in this state, the
court under whose direction such business is operated
shall, by the entry of a proper order or decree in the
cause, make provisions, so far as the assets in admin-
istration will permit, for the regular payment of such
payments, interest and penalties as the same become
due.

The secretary of state of this state shall withhold the
issuance of any certificate of dissolution or withdrawal
in the case of any corporation organized under the laws
of this state or organized under the laws of any other
state and admitted to do business in this state, until
notified by the commissioner that all payments, interest
and penalties thereon against any such corporation
which is an employer under this chapter have been paid
or that provision satisfactory to the commissioner has
been made for payment.

In any case when an employer required to subscribe
to the fund defaults in payments of premium, premium
deposits, or interest thereon, for as many as two
calendar quarters, which quarters need not be consec-
utive, and remains in default after due notice, and the
commissioner has been unable to collect such payments
by any of the other civil remedies prescribed herein, the
commissioner may bring action in the circuit court of
Kanawha County to enjoin such employer from contin-
uing to carry on the business in which such liability was
incurred: Provided, That the commissioner may as an
alternative to this action require such delinquent
employer to file a bond in the form prescribed by the
commissioner with satisfactory surety in an amount not
less than fifty percent more than the payments, interest
and penalties due.
§23-2-9. Election of employer to provide own system of compensation; mandatory participation in second injury reserve of surplus fund and exceptions; election to provide catastrophe coverage.

(a) (1) Notwithstanding anything contained in this chapter, employers subject to this chapter who are of sufficient financial responsibility to insure the payment of compensation to injured employees and the dependents of fatally injured employees, whether in the form of pecuniary compensation or medical attention, funeral expenses or otherwise as herein provided, of the value at least equal to the compensation provided in this chapter, or employers of such financial responsibility who maintain their own benefit funds, or system of compensation to which their employees are not required or permitted to contribute, or such employers as shall furnish bond or other security to insure such payments, may, upon a finding of such facts by the compensation commissioner, elect to pay individually and directly, or from such benefit funds, department or association, such compensation and expenses to injured employees or fatally injured employees' dependents. The compensation commissioner shall require security or bond from such employer, to be approved by the commissioner, and of such amount as is by the commissioner considered adequate and sufficient to compel or secure to such employees, or their dependents, payment of the compensation and expenses herein provided for, which shall in no event be less than the compensation paid or furnished out of the state workers' compensation fund in similar cases to injured employees or the dependents of fatally injured employees whose employers contribute to such fund.

(2) Any employer electing under this section to insure payment of compensation to injured employees and the dependents of fatally injured employees shall on or before the last day of the first month of each quarter, for the preceding quarter, file with the commissioner a sworn statement of the total earnings of all the employer's employees subject to this chapter for such preceding
quarter, and shall pay into the workers' compensation fund:

(A) A sum sufficient to pay the employer's proper proportion of the expenses of the administration of this chapter; and

(B) A sum sufficient to pay the employer's proper portion of the expenses for claims for those employers who are delinquent in the payment of premiums; and

(C) A sum sufficient to pay the employer's fair portion of the expenses of the disabled workers' relief fund, as may be determined by the commissioner.

(3) The commissioner shall make and promulgate legislative rules in accordance with chapter twenty-nine-a of this code governing the mode and manner of making application, and the nature and extent of the proof required to justify the finding of facts by the commissioner, to consider and pass upon such election by employers subject to this chapter, which rules shall be general in their application.

(4) Any employer whose record upon the books of the compensation commissioner shows a liability against the workers' compensation fund incurred on account of injury to or death of any of the employer's employees, in excess of premiums paid by such employer, shall not be granted the right, individually and directly or from such benefit funds, department or association, to compensate the employer's injured employees and the dependents of the employer's fatally injured employees until the employer has paid into the workers' compensation fund the amount of such excess of liability over premiums paid, including the employer's proper proportion of the liability incurred on account of explosions, catastrophes or second injuries as defined in section one, article three of this chapter, occurring within the state and charged against such fund.

(b) (1) Subject to any limitations set forth herein, all employers who have heretofore elected, or shall hereafter elect, to pay compensation and expenses directly as provided in subsection (a) of this section, shall, unless they be permitted under the provisions of this subsection hereinafter set forth to give the second injury security
or bond hereinafter provided for, pay into the second injury reserve of the surplus fund referred to in section one, article three of this chapter, upon the basis set forth herein, such payments to be made at the same time as provided in this section for the payment of proportion of expenses of administration.

(2) To determine the contribution for second injury coverage for self-insured employers, the commissioner shall first establish, based upon actuarial advice, the projected funding cost for incurred losses for the second injury reserve of the surplus fund for the prospective year for each industrial group or class, so that industrial groups or classes with significantly different experience in use of the second injury reserve shall pay their proper share based upon the record of that industrial group or class: Provided, That the commissioner shall establish industrial groups or classes as permitted by section four of this article but need not establish the same number of industrial groups or classes as the number established for purposes of section four of this article. The commissioner shall further allocate such cost within the industrial group or class to individual employers based upon the ratio of the individual employer's record of actual paid losses for claims chargeable to that employer to the total actual paid losses for claims chargeable to all employers in that industrial group or class. Actual paid losses shall mean cash payments made under this chapter as reflected on the books of the commissioner for a period not to exceed three years ending the thirty-first day of December of the year preceding the year in which the rate is to be effective but shall not include any payments or losses charged to any portion of the surplus fund: Provided, however, That any employer whose record for such period cannot be obtained shall be given a rate based upon the employer's record for any part of such period as may be deemed just and equitable by the commissioner.

(3) In case there be a second injury, as defined in section one, article three of this chapter, to an employee of any employer making such second injury reserve payments, the employer shall not be liable to pay
compensation or expenses arising from or necessitated by the second injury, and such compensation and expenses shall not be charged against such employer, but such compensation and expenses shall be paid from the second injury reserve of the surplus fund in the same manner and to the same extent as in the case of premium-paying subscribers.

(4) (A) Any employer who has heretofore elected to pay compensation and expenses directly under the provisions of subsection (a) of this section, and who:

(i) Elected prior to the first day of January, one thousand nine hundred eighty-nine, not to make payments into the second injury reserve of the surplus fund, and

(ii) Continuously without interruption, from the first day of January, one thousand nine hundred eighty-nine, to the effective date of this section, elected not to make payments into the second injury reserve of the surplus fund, may elect to continue not to make payments into the second injury reserve of the surplus fund.

(B) Any employer who has heretofore elected to pay compensation and expenses directly under the provisions of subsection (a) of this section, and who:

(i) Was making payments into the second injury reserve of the surplus fund on the first day of January, one thousand nine hundred eighty-nine, and

(ii) Elected not to make such payments during calendar year one thousand nine hundred eighty-nine, and

(iii) Has not thereafter, to the effective date of this section, recommenced making such payments, shall elect one of the two following options:

(I) Begin payments into the second injury reserve of the surplus fund as of the first day of July, one thousand nine hundred ninety, in which event such employer shall not thereafter be permitted to elect not to make such payments; or

(II) Elect to continue not making such payments in which event the commissioner shall examine the
employer's record with regard to the second injury reserve of the surplus fund upon the books of the commissioner and if such record shows a liability against the surplus fund incurred on account of injury to any of the employer's employees, in excess of premiums paid by such employer to the second injury reserve of the surplus fund, then such employer shall pay to the commissioner the present value of that liability.

(C) Any employer who is permitted by paragraphs (A) and (B) of this subdivision not to make payments into the second injury reserve of the surplus fund shall, in addition to bond or security required by subsection (a) of this section, furnish second injury security or bond, approved by the commissioner, in such amount and form as the commissioner shall consider adequate and sufficient to compel or secure payment of all compensation and expenses arising from, or necessitated by, any second injury that is or remains to be paid by the employer: Provided, That any second injury security or bond given by any such employer pursuant to rules promulgated by the commissioner and with the approval of the commissioner prior to the effective date of this section shall remain valid upon the effective date of this section until such time thereafter as the commissioner notifies such employer to the contrary.

(D) Any employer permitted by paragraphs (A) and (B) of this subdivision not to make payments into the second injury reserve of the surplus fund who on or after the effective date of this section elects to make payments into the second injury reserve of the surplus fund shall not thereafter be permitted to elect not to make such payments.

(5) Except as provided in paragraphs (A) and (B), subdivision (4) of this subsection, all other employers who have heretofore elected or who henceforth elect to pay compensation and expenses directly under the provisions of subsection (a) of this section shall pay into the second injury reserve of the surplus fund such amounts as are determined by the commissioner pursuant to subdivision (2), subsection (b) of this
Provided, That all such other employers who, as of the date immediately preceding the effective date of this section, have been permitted by the commissioner not to make such payments are not required to commence making such payments until the first day of July, one thousand nine hundred ninety.

(c) (1) All employers who have heretofore elected, or shall hereafter elect, to pay compensation and expenses directly as provided in subsection (a) of this section shall, unless they give the catastrophe security or bond hereinafter provided for, pay into the catastrophe reserve of the surplus fund referred to in section one, article three of this chapter, upon the same basis and in the same percentages, subject to the limitations herein set forth, as funds are set aside for the maintenance of the catastrophe reserve of the surplus fund out of payments made by premium-paying subscribers, such payments to be made at the same time as hereinbefore provided with respect to payment of proportion of expenses of administration.

(2) In case there be a catastrophe, as defined in section one, article three of this chapter, to the employees of any employer making such payments, the employer shall not be liable to pay compensation or expenses arising from or necessitated by the catastrophe, and such compensation and expenses shall not be charged against such employer, but such compensation and expenses shall be paid from the catastrophe reserve of the surplus fund in the same manner and to the same extent as in the case of premium-paying subscribers.

(3) If an employer elects to make payments into the catastrophe reserve of the surplus fund as aforesaid, then the bond or other security required by this section shall be of such amount as the commissioner considers adequate and sufficient to compel or secure to the employees or their dependents payments of compensation and expenses, except any compensation and expenses that may arise from, or be necessitated by, any catastrophe as defined in section one, article three of this chapter, which last are secured by and shall be paid
from the catastrophe reserve of the surplus fund as hereinbefore provided.

(4) If any employer elects not to make payments into the catastrophe reserve of the surplus fund, as hereinbefore provided, then, in addition to bond or security in the amount hereinbefore set forth, such employer shall furnish catastrophe security or bond, approved by the commissioner, in such additional amount as the commissioner shall consider adequate and sufficient to compel or secure payment of all compensation and expenses arising from, or necessitated by, any catastrophe that might thereafter ensue.

(5) All employers hereafter making application to carry their own risk under the provisions of this subsection shall, with such application, make a written statement as to whether such employer elects to make payments as aforesaid into the catastrophe reserve of the surplus fund or not to make such payments and to give catastrophe security or bond hereinbefore in such case provided for.

(d) In any case under the provisions of this section that shall require the payment of compensation or benefits by an employer in periodical payments, and the nature of the case makes it possible to compute the present value of all future payments, the commissioner may, in his or her discretion, at any time compute and permit or require to be paid into the workers' compensation fund an amount equal to the present value of all unpaid compensation for which liability exists, in trust; and thereupon such employer shall be discharged from any further liability upon such award, and payment of the same shall be assumed by the workers' compensation fund.

(e) Any employer subject to this chapter who shall elect to carry the employer's own risk and who has complied with the requirements of this section and the rules of the compensation commissioner shall not be liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after such election and during the period that
the employer is allowed by the commissioner to carry
the employer's own risk.

§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.

(a) If any employer is required to subscribe to the workers' compensation fund pursuant to section one of this article and does not elect to provide the employer's own system of compensation pursuant to section nine of this article, and shall sell or otherwise transfer substantially 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 such employer's premiums, premium deposits, interest, and claims losses shall become due and owing to the commissioner upon the execution of the agreement of sale or other transfer. In addition, any repayment agreement entered into by the employer with the commissioner 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 commissioner but not yet paid shall become due. Upon execution of an agreement of sale or other transfer, as aforesaid, the commissioner shall continue to have a lien, as provided for in section five-a of this article, against all of the other property of the employer and which lien shall constitute a personal obligation of the employer. As used in this section, the term "assets" means all property of whatever type in which the employer has an interest including, but not limited to, good will, access to leases such as the right to sublease, assignment of contracts for the sale of products, inventory or stock of goods in bulk, or accounts receivable.

(b) If an employer subject to subsection (a) of this section pays to the commissioner, 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 commissioner shall issue a certificate to the employer stating that the employer's account is in good standing with the commissioner and that the assets may be sold or otherwise transferred without the attachment of the commissioner's lien. In the event that the employer would not owe any sum to the commissioner 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 commissioner and that the assets may be sold or otherwise transferred without the attachment of the commissioner's lien.

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

(a) 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 actual business, business assets, customers, clients, contracts, operations, stock of goods, equipment, or substantially all of its employees, then any liens for payments owed to the commissioner for premiums, premium deposits, interest, or claims losses by the predecessor employer or any liens held by the commissioner against the predecessor employer's property shall be extended to the assets acquired as the result of the sale or transfer by the new employer and shall be enforceable against such assets by the commissioner to the same extent as provided for the enforcement of liens against the predecessor employer pursuant to section five-a of this article. As used in this section, the term "assets" is defined as provided in section fourteen of this article. The foregoing provisions are expressly intended to impose upon such new employers the duty of obtaining, prior to the date of such acquisition, verification from the commissioner that the predecessor employer's account with the commissioner is in good standing.

(b) At any time prior to or following the acquisition described in subsection (a) of this section, the buyer or
other recipient may file a verified petition with the commissioner requesting that the commissioner waive the payment by the buyer or other recipient of premiums, premium deposits, interest, and claims losses, or any combination thereof. The commissioner shall review the petition by considering the six factors set forth in subsection (f) of section five of this article. Unless requested by a party or by the commissioner, no hearing need be held on the petition. However, any decision made by the commissioner on the petition shall be in writing and shall include appropriate findings of fact and conclusions of law. Such decision shall be effective ten days following notice to the public of the decision unless an objection is filed in the manner herein provided. Such notice shall be given by the commissioner's publication of a Class I legal advertisement which complies with the provisions of article three, chapter fifty-nine of this code. The publication shall include a summary of the decision and 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 commissioner setting forth the objection and the basis therefor. The publication area shall be Kanawha County, West Virginia. If any such objection is filed, the commissioner 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.

(c) In the factual situations set forth in subsection (a) of this section, if the predecessor's modified rate of premium, as calculated in accordance with section four of this article, is greater than the manual rate of premium, as calculated in accordance with section four of this article, for other employers in the same class or group, then the new employer 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
§23-2-16. Acceptance or assignment of premium rate.

(a) If a new corporate employer which is not subject to the provisions of section fifteen of this article is created by the officers or shareholders of a preexisting corporate employer and if the new corporate employer and the preexisting corporate employer are managed by the same, or substantially the same, management personnel, and (2) have a common ownership by at least forty percent of each corporation’s shareholders, and (3) is in the same class or group as determined by the commissioner under the provisions of section four of this article, and (4) if the preexisting corporate employer's account is in good standing with the commissioner, then, at the time the new corporate employer registers with the commissioner, the new corporate employer may request that the commissioner assign to it the same rate of payment of premiums as that assigned to the preexisting corporate employer. If the commissioner decides that the granting of such a request is in keeping with his or her fiduciary obligations to the workers’ compensation fund, then the commissioner may grant the request of the employer.

(b) If a new corporate employer which is not subject to the provisions of section fifteen of this article is created by the officers or shareholders of a preexisting corporate employer and if the new corporate employer and the preexisting corporate employer are managed by the same, or substantially the same, management personnel, and (2) have a common ownership by at least forty percent of each corporation’s shareholders, and (3) is in the same class or group as determined by the commissioner under the provisions of section four of this article, then, at any time within one year of the new corporate employer’s registration with the commissioner, the commissioner may decide that, in keeping with his or her fiduciary obligations to the workers’ compensation fund, the new corporate employer shall be assigned the same rate of payment of premiums as that assigned to the preexisting corporate employer.
employer at any time within the aforesaid one year period: Provided, That if the new corporate employer fails to reveal to the commissioner on the forms provided by the commissioner that its situation meets the factual requirements of this section, then the commissioner may demand payment from the new corporate employer in an amount sufficient to eliminate the deficiency in payments by the new corporate employer from the date of registration to the date of discovery plus interest thereon as provided for by section thirteen of this article. The commissioner may utilize the powers given to the commissioner in section five-a of this article to collect the amount due.

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

Notwithstanding any provision in this chapter to the contrary other than the provisions of section six, article five of this chapter, and notwithstanding any provision in section five, article five of chapter twenty-nine-a of this code to the contrary, in any situation where an employer objects to a decision or action of the commissioner made under the provisions of this article, then such employer shall be entitled to file a petition demanding a hearing upon such decision or action which petition must be filed within thirty days of the employer's receipt of notice of the disputed commissioner's decision or action or, in the absence of such receipt, within sixty days of the date of the commissioner's making such disputed decision or taking such disputed action, such time limitations being hereby declared to be a condition of the right to litigate such decision or action and hence jurisdictional. The employer's petition shall clearly identify the decision or action disputed and the bases upon which the employer disputes the decision or action. Upon receipt of such a petition, the commissioner shall schedule a hearing which shall be conducted in accordance with the provisions of article five of chapter twenty-nine-a of this code. An appeal from a final decision of the commissioner shall be taken in accord with the provisions of articles five and six, chapter twenty-nine-a of this code: Provided, That all

1 The commissioner is authorized to promulgate legislative rules pursuant to the provisions of article three of chapter twenty-nine-a of this code for the implementation of this article: Provided, That no such legislative rule may prohibit the right of an employer to perform any function not constituting the practice of law and to represent itself at any hearing to which the employer may be entitled pursuant to section seventeen of this article other than appellate proceedings and upon its election to do so without benefit of counsel or other legal representation. Such election shall be in writing upon a form prescribed by the commissioner which designates its duly authorized representative in the performance of such functions.

ARTICLE 2A. SUBROGATION.

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


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

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

(b) Notwithstanding the provisions of subsection (a) of this section, if an injured worker, his or her dependents or his or her personal representative makes a claim against said third party and recovers any sum thereby, the commissioner or a self-insured employer shall be allowed subrogation with regard to medical benefits paid as of the date of the recovery: Provided, That under no circumstances shall any moneys received by the commissioner or self-insured employer as subrogation to medical benefits expended on behalf of the injured or deceased worker exceed fifty percent of the amount received from the third party as a result of
the claim made by the injured worker, his or her dependents or personal representative, after payment of attorney's fees and costs, if such exist.

(c) In the event that an injured worker, his or her dependents or personal representative makes a claim against a third party, there shall be, and there is hereby created, a statutory subrogation lien upon such moneys received which shall exist in favor of the commissioner or self-insured employer. Any injured worker, his or her dependents or personal representative who receives moneys in settlement in any manner of a claim against a third party shall remain subject to the subrogation lien until payment in full of the amount permitted to be subrogated under subsection (b) of this section is paid.

(d) The right of subrogation granted by the provisions of this section shall not attach to any claim arising from a right of action which arose or accrued, in whole or in part, prior to the effective date of this article.


The legislative joint committee on government and finance is hereby instructed to undertake a review of the applicability of expanded subrogation policies with regard to the workers' compensation fund including, but not limited to, an analysis of the cost incurred by the fund or other governmental agencies, the effect of such subrogation at various levels upon the generation of revenues for the fund, and the equity or fairness of the withholding of moneys, services or things of value from injured workers as the result of such subrogation. Such study shall be reflective of the views not only of the commissioner, but also of claimants, claimants' counsel, employers, and actuaries or others with unique or special knowledge of subrogation programs in the area of workers' compensation.

ARTICLE 3. WORKERS' COMPENSATION FUND.

§23-3-1. Compensation fund; surplus fund; catastrophe and catastrophe payment defined; second injury and second injury reserve; compensation by employers.

(a) The commissioner shall establish a workers'
compensation fund from the premiums and other funds paid thereto by employers, as herein provided, for the benefit of employees of employers who have paid the premiums applicable to such employers and have otherwise complied fully with the provisions of section five, article two of this chapter, and for the benefit, to the extent elsewhere in this chapter set out, of employees of employers who have elected, under section nine, article two of this chapter, to make payments into the surplus fund hereinafter provided for, and for the benefit of the dependents of all such employees, and for the payment of the administration expenses of this chapter and shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code with respect to the collection, maintenance and disbursement of such fund not in conflict with the provisions of this chapter.

(b) A portion of all premiums that shall be paid into the workers' compensation fund by subscribers not electing to carry their own risk under section nine, article two of this chapter, shall be set aside to create and maintain a surplus fund to cover the catastrophe hazard, the second injury hazard, and all losses not otherwise specifically provided for in this chapter. The percentage to be set aside shall be determined by the commissioner as necessary to maintain a solvent surplus fund. All interest earned on investments by the workers' compensation fund, which is attributable to the surplus fund, shall be credited to the surplus fund.

(c) A catastrophe is hereby defined as an accident in which three or more employees are killed or receive injuries, which, in the case of each individual, consist of: Loss of both eyes or the sight thereof; or loss of both hands or the use thereof; or loss of both feet or the use thereof; or loss of one hand and one foot or the use thereof. The aggregate of all medical and hospital bills and other costs, and all benefits payable on account of a catastrophe is hereby defined as "catastrophe payment". In case of a catastrophe to the employees of an employer who is an ordinary premium-paying subscriber to the fund, or to the employees of an employer
who, having elected to carry the employer's own risk
under section nine, article two of this chapter, has
heretofore elected, or may hereafter elect, to pay into the
catastrophe reserve of the surplus fund under the
provisions of that section, then the catastrophe payment
arising from such catastrophe shall not be charged
against, or paid by, such employer but shall be paid
from the catastrophe reserve of the surplus fund.

(d) (1) If an employee who has a definitely ascertain-
able physical impairment, caused by a previous injury,
irrespective of its compensability, becomes permanently
and totally disabled through the combined effect of such
previous injury and a second injury received in the
course of and as a result of his or her employment, the
employer shall be chargeable only for the compensation
payable for such second injury: *Provided*, That in
addition to such compensation, and after the completion
of the payments therefor, the employee shall be paid the
remainder of the compensation that would be due for
permanent total disability out of a special reserve of the
surplus fund known as the second injury reserve,
created in the manner hereinbefore set forth.

(2) If an employee of an employer, where the em-
ployer has elected to carry his own risk under section
nine, article two of this chapter, and is permitted not
to make payments into the second injury reserve of
surplus fund under the provisions of that section, has a
definitely ascertainable physical impairment caused by
a previous injury, irrespective of its compensability, and
becomes permanently and totally disabled from the
combined effect of such previous injury and a second
injury received in the course of and as a result of his or her
employment, the employee shall be granted an
award of total permanent disability and his or her
employer shall, upon order of the commissioner,
compensate the said employee in the same manner as
if the total permanent disability of the employee had
resulted from a single injury while in the employ of such
employer.

(e) Employers electing, as herein provided, to com-
pensate individually and directly their injured em-
ployees and their fatally injured employees' dependents
shall do so in the manner prescribed by the commis-
sioner, and shall make all reports and execute all
blanks, forms and papers as directed by the commis-
sioner, and as provided in this chapter.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1d. Method and time of payments for permanent disability.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental
and hospital treatment; legislative approval; guidelines;
preferred provider agreements; charges in excess of scheduled
amounts not to be made; required disclosure of financial interest
in sale or rental of medically related mechanical appliances or
deVICES; promulgation of rules to enforce requirement; conse-
quences of failure to disclose; contract by employer with
hospital, physician, etc., prohibited; criminal penalties for
violation; payments to certain providers prohibited.

§23-4-3a. Wrongfully seeking payment for services or supplies; criminal
penalties.

§23-4-3b. Creation of health care advisory panel.

§23-4-3c. Suspension or termination of providers of health care.

§23-4-3d. Classification of disability benefits.

§23-4-3e. Benefits payable to part-time employees.

§23-4-3f. Monitoring of injury claims; legislative findings; review of medical
evidence; recommendation of authorized treating physician;
independent medical evaluations; temporary total disability
benefits and the termination thereof; mandatory action;
additional authority.

§23-4-3g. Trial return to work.

§23-4-3h. Physical examination of claimant.

§23-4-3i. Occupational pneumoconiosis board—Reports and distribution
thereof; presumption; findings required of board; objection to
findings; procedure thereon.

§23-4-3j. Physical and vocational rehabilitation.

§23-4-3k. Computation of benefits.

§23-4-3l. Determination of nonmedical questions by commissioner; claims
for occupational pneumoconiosis; hearing.

§23-4-3m. Wrongfully seeking compensation; criminal penalties; restitution.

§23-4-3n. Method and time of payments for permanent
disability.

1 (a) If the commissioner makes an award for perman-
ent partial or permanent total disability, the commis-
sioner or self-insured employer shall start payment of
benefits by mailing or delivering the amount due
directly to the employee within fifteen days from the
date of the award.
(b) If a timely protest to the award is filed, as provided in section one or section one-h, article five of this chapter, the commissioner or self-insured employer shall continue to pay to the claimant such benefits during the period of such disability unless it is subsequently found by the commissioner or administrative law judge that the claimant was not entitled to receive the benefits, or any part thereof, so paid, in which event the commissioner shall, where the employer is a subscriber to the fund, credit said employer's account with the amount of the overpayment; and, where the employer has elected to carry the employer's own risk, the commissioner shall refund to such employer the amount of the overpayment. The amounts so credited to a subscriber or repaid to a self-insurer shall be charged by the commissioner to the surplus fund created by section one, article three of this chapter. If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him or her pursuant to a prior decision, such amount of benefits so paid shall be deemed overpaid. The commissioner may only recover such amount by withholding, in whole or in part, as determined by the commissioner, future permanent partial disability benefits payable to the individual in the same or other claims and credit such amount against the overpayment until it is repaid in full.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited.

The commissioner shall establish and alter from time
to time as he or she may determine to be appropriate
a schedule of the maximum reasonable amounts to be
paid to chiropractic physicians, medical physicians,
osteopathic physicians, podiatrists, optometrists, voca-
tional rehabilitation specialists, pharmacists, ophthal-
mologists, and others practicing medicine and surgery,
surgeons, hospitals or other persons, firms or corpora-
tions for the rendering of treatment to injured em-
ployees under this chapter. The commissioner also, on
the first day of each regular session, and also from time
to time, as the commissioner may consider appropriate,
shall submit the schedule, with any changes thereto, to
the Legislature. The promulgation of the schedule is not
subject to the legislative rule-making review procedures
established in sections eleven through fifteen, article
three, chapter twenty-nine-a of this code.

The commissioner shall disburse and pay from the
fund for such personal injuries to such employees as may
be entitled thereto hereunder as follows:

(a) Such sums for medicines, medical, surgical,
dental and hospital treatment, crutches, artificial limbs
and such other and additional approved mechanical
appliances and devices as may be reasonably required.
The commissioner shall determine that which is reason-
ably required within the meaning of this section in
accordance with the guidelines developed by the health
care advisory panel pursuant to section three-b of this
article: Provided, That nothing herein shall prevent the
implementation of guidelines applicable to a particular
type of treatment or service or to a particular type of
injury before guidelines have been developed for other
types of treatment or services or injuries: Provided,
however, That any guidelines for utilization review
which are developed in addition to the guidelines
provided for in section three-b of this article may be
utilized by the commissioner until superseded by
guidelines developed by the health care advisory panel
pursuant to section three-b of this article. Each health
care provider who seeks to provide services or treatment
which are not within any such guideline shall submit to
the commissioner specific justification for the need for such additional services in the particular case and the commissioner shall have the justification reviewed by a health care professional before authorizing any such additional services. The commissioner is authorized to enter into preferred provider agreements.

(b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices authorized under subdivision (a) hereof may be made to the injured employee, or to the person, firm or corporation who or which has rendered such treatment or furnished any of the items specified above, or who has advanced payment for same, as the commissioner may deem proper, but no such payments or disbursements shall be made or awarded by the commissioner unless duly verified statements on forms prescribed by the commissioner shall be filed with the commissioner within two years after the cessation of such treatment or the delivery of such appliances: Provided, That no payment hereunder shall be made unless such verified statement shows no charge for or with respect to such treatment or for or with respect to any of the items specified above has been or will be made against the injured employee or any other person, firm or corporation, and when an employee covered under the provisions of this chapter is injured in the course of and as a result of his or her employment and is accepted for medical, surgical, dental or hospital treatment, the person, firm or corporation rendering such treatment is hereby prohibited from making any charge or charges therefor or with respect thereto against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commissioner's schedule established as aforesaid.

(c) No chiropractic physician, medical physician, osteopathic physician, podiatrist, or others practicing medicine or surgery (collectively and individually
(c) If a practitioner (as hereinafter defined) shall refer his or her patients to the practitioner himself or herself or to a supplier of mechanical appliances or devices owned in whole or in part by the practitioner, the practitioner’s partnership or professional corporation, or a member of the practitioner’s immediate family for the purchase or rental of any mechanical appliances or devices which the practitioner has prescribed or recommended to such patient except upon the terms prescribed by this section. Examples of mechanical appliances or devices are described as follows, but these examples are described for illustrative purposes only and are not intended to limit the range of items included by this phrase: Hearing aids; crutches; artificial limbs; oxygen concentrators; TENS units. For the purposes of this subsection, the term “practitioner” shall include natural persons, partnerships, and professional corporations.

(1) In order to avoid the bar of this subdivision (c), a practitioner shall first disclose to his or her patient the ownership interest of the practitioner, or of the practitioner’s partnership or professional corporation, or of a member of the practitioner’s immediate family in the entity which would sell or rent the mechanical appliance or device to the patient. If the practitioner would sell or rent the mechanical appliance or device as part of his or her practice and not as a separate legal entity, the practitioner shall disclose this fact to the patient. These disclosures must be delivered in writing to the patient.

(2) The commissioner is authorized to promulgate legislative rules pursuant to chapter twenty-nine-a of this code for the enforcement and implementation of this subdivision (c). The commissioner may include in those rules a requirement that the written notice disclose to the patient that he or she is free to use any lawful supplier of the mechanical appliance or device prescribed or recommended and that other suppliers may offer the mechanical appliance or device for less cost but of equal or better quality elsewhere and that the patient is encouraged to comparison shop. The commissioner’s
rule may also provide for a differing level of reimbursement to the supplier if the supplier is the practitioner himself or herself or if the supplier is owned in whole or in part by the practitioner, the practitioner’s partnership or professional corporation, or a member of the practitioner’s immediate family as compared to the reimbursement of a supplier who is wholly independent from the practitioner.

(3) Failure by a practitioner to comply with the provisions of this subdivision (c) shall cause the practitioner to forfeit his, her, or its right to reimbursement for the services rendered by the practitioner to the patient and, if any such services have previously been reimbursed, the commissioner shall either seek recovery of such funds by any lawful means or by deducting such amounts from future payments to the practitioner on account of services rendered to the same patient or to other claimants of the workers’ compensation fund. In addition, failure by a practitioner to comply with the provisions of this subdivision (c) shall also result in the denial of payment to the supplier of the mechanical appliance or device if that supplier is one which is owned in whole or in part by the practitioner, the practitioner’s partnership or professional corporation, or a member of the practitioner’s immediate family. If such supplier has already been reimbursed for the cost of the pertinent mechanical appliance or device, then the commissioner shall either seek recovery of such funds by any lawful means or by deducting such amounts from future payments to the supplier on account of goods delivered to the same patient or to other claimants of the workers’ compensation fund.

(d) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees to render medical, dental or hospital service or to give medical or surgical attention therein to any employee for injury compensable within the purview of this chapter, and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental
or hospital service within such hospital for such compensable injury. Any employer violating this section shall be liable in damages to the employer's employees as provided in section eight, article two of this chapter, and any employer or hospital or agent or employee thereof violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than one hundred dollars nor more than one thousand dollars or by imprisonment not exceeding one year, or both: Provided, That the foregoing provisions of this subdivision (d) shall not be deemed to prohibit an employer from participating in a preferred provider organization or program or a health maintenance organization or other medical cost containment relationship with the providers of medical, hospital or other health care: Provided, however, That nothing in this section shall be deemed to restrict the right of a claimant to select a health care provider for treatment of a compensable injury or disease.

(e) When an injury has been reported to the commissioner by the employer without protest, the commissioner may pay, or order an employer who or which made the election and who or which received the permission mentioned in section nine, article two of this chapter to pay, within the maximum amount provided by schedule established by the commissioner as aforesaid, bills for medical or hospital services without requiring the injured employee to file an application for benefits.

(f) The commissioner shall provide for the replacement of artificial limbs, crutches, hearing aids, eyeglasses and all other mechanical appliances provided in accordance with this section which later wear out, or which later need to be refitted because of the progression of the injury which caused the same to be originally furnished, or which are broken in the course of and as a result of the employee's employment. The fund or self-insured employer shall pay for these devices, when needed, notwithstanding any time limits provided by law.

(g) No payment shall be made to a health care
Notwithstanding the foregoing, the commissioner may establish fee schedules, make payments and take other actions required or allowed pursuant to article twenty-nine-d, chapter sixteen of this code.

§23-4-3a. Wrongfully seeking payment for services or supplies; criminal penalties.

(a) If any person who is a health care provider shall knowingly, and with intent to defraud, secure or attempt to secure payment from the workers' compensation fund for services or supplies when such person is not entitled to such payment or is entitled to some lesser amount of payment, such person shall be 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) Any person who is a health care provider who fails, in violation of subsection (e), section three-c of this article, to post a notice, in the form required by the commissioner, in the provider'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 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.

(c) Any person who is a health care provider, who is suspended or terminated under section three-c of this article and, who intentionally attempts to collect any sum of money from an injured employee who was not, prior to the provision of any treatment or other services or supplies, provided with the notice required by subsection (c), section three-c of this article, shall be guilty of a misdemeanor and, upon conviction thereof,
§23-4-3b. Creation of health care advisory panel.

The commissioner shall establish a health care advisory panel consisting of representatives of the various branches and specialties among health care providers in this state. There shall be a minimum of five members of the health care advisory panel who shall receive reasonable compensation for their services and reimbursement for reasonable actual expenses. Each member of this panel shall be provided appropriate professional or other liability insurance, without additional premium, by the state board of risk and insurance management created pursuant to article twelve, chapter twenty-nine of this code. The panel shall:

(a) Establish guidelines for the health care which is reasonably required for the treatment of the various types of injuries and occupational diseases within the meaning of section three of this article.

32 shall be fined not more than ten thousand dollars, or
33 imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

(d) For the purposes of this section, the term "person who is a health care provider" shall mean any person who has rendered, or who represents that he has rendered, any treatment to an injured employee under this chapter, or any person who has supplied, or who represents that he has supplied, any medication or any crutches, artificial limbs and other mechanical appliances and devices for such injured employee. The term shall include, but not be limited to, persons practicing medicine and surgery, podiatry, dentistry, nursing, pharmacy, optometry, osteopathic medicine and surgery, chiropractic, physical therapy, psychology, radiologic technology, occupational therapy or vocational rehabilitation, and shall also include hospitals, professional corporations, and other corporations, firms and business entities.

(e) 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 under this chapter and shall cease to receive payment for such services or supplies.
(b) Establish protocols and procedures for the performance of examinations or evaluations performed by physicians or medical examiners pursuant to sections seven-a and eight of this article.

(c) Assist the commissioner in establishing guidelines for the evaluation of the care provided by health care providers to injured employees for purposes of section three-c of this article.

(d) Assist the commissioner in establishing guidelines as to the anticipated period of disability for the various types of injuries pursuant to subsection (b), section seven-a of this article.

(e) Assist the commissioner in establishing appropriate professional review of requests by health care providers to exceed the guidelines for treatment of injuries and occupational diseases established pursuant to subsection (a) of this section.

§23-4-3c. Suspension or termination of providers of health care.

(a) The commissioner may suspend for up to one year or terminate the right of any health care provider, including a provider of rehabilitation services within the meaning of section nine of this article, to obtain payment for services rendered to injured employees if the commissioner finds that the health care provider is regularly providing excessive, medically unreasonable or unethical care to injured employees or if the commissioner finds that a health care provider is attempting to make any charge or charges against the injured employee or any other person, firm or corporation which would result in a total charge for any treatment rendered in excess of the maximum amount set by the commissioner, in violation of section three of this article. The commissioner shall consult with medical experts, including the health care advisory panel established pursuant to section three-b of this article, for purposes of determining whether a health care provider should be suspended or terminated pursuant to this section.
Upon the commissioner determining that there is probable cause to believe that a health care provider should be suspended or terminated pursuant to this section, the commissioner shall provide such health care provider with written notice which shall state the nature of the charges against the health care provider and the time and place at which such health care provider shall appear to show cause why the health care provider's right to receive payment under this chapter should not be suspended or terminated, at which time and place such health care provider shall be afforded an opportunity to review the commissioner's evidence and to cross-examine the commissioner's witnesses and also afforded the opportunity to present testimony and enter evidence in support of its position. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. The hearing may be conducted by the commissioner or a hearing officer appointed by the commissioner. The commissioner or hearing officer shall have the power to subpoena witnesses, papers, records, documents and other data and things in connection with the proceeding hereunder and to administer oaths or affirmations in any such hearing. If, after reviewing the record of such hearing, the commissioner determines that the right of such health care provider to obtain payment under this article should be suspended for a specified period of time or should be terminated, the commissioner shall issue a final order suspending or terminating the right of such health care provider to obtain payment for services under this article. Any health care provider so suspended or terminated shall be notified in writing and the notice shall specify the reasons for the action so taken. Any appeal by the health care provider shall be brought in the circuit court of Kanawha County or in the county in which the provider's principal place of business is located. The scope of the court's review of such an appeal shall be as provided in section four, article five, chapter twenty-nine-a of this code. The provider may be suspended or terminated, based upon the final order of the commissioner, pending final disposition of any appeal. Such final order may be
(c) No payment shall be made to a health care provider or to an injured employee for services provided by a health care provider after the effective date of a commissioner's final order terminating or suspending the health care provider: Provided, That nothing herein shall prohibit payment by the commissioner or self-insured employer to a suspended or terminated health care provider for medical services rendered where the medical services were rendered to an injured employee in an emergency situation. The suspended or terminated provider is prohibited from making any charge or charges for any services so provided against the injured employee unless the injured employee, before any services are rendered, is given notice by the provider in writing that the provider does not participate in the workers' compensation program and that the injured employee will be solely responsible for all payments to the provider, and unless the injured employee also signs a written consent, before any services are rendered, to make payment directly and to waive any right to reimbursement from the commissioner or the self-insured employer. The written consent and waiver signed by the injured employee shall be filed by the provider with the commissioner and shall be made a part of the claim file.

(d) The commissioner shall notify each claimant, whose duly authorized treating physician or other health care provider has been suspended or terminated pursuant to this section, of the suspension or termination of the provider's rights to obtain payment under this chapter and shall assist the claimant in arranging for transfer of his or her care to another physician or provider.

(e) Each suspended or terminated provider shall post in the provider's public waiting area or areas a written
notice, in the form required by the commissioner, of the
suspension or termination of the provider's rights to
obtain payment under this chapter.

(f) A suspended or terminated provider may apply for
reinstatement at the end of the term of suspension or,
if terminated, after one year from the effective date of
termination.

(g) The commissioner shall promulgate legislative
rules pursuant to chapter twenty-nine-a of this code for
the purpose of implementing this section.

§23-4-6. Classification of disability benefits.

Where compensation is due an employee under the
provisions of this chapter for personal injury, such
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 pursu-
ant 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
weekly benefits as follows: 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 the
percentage of the average weekly wage in West Virgi-
nia, as follows: On or after July one, one thousand nine
hundred sixty-nine, forty-five percent; on or after July
one, one thousand nine hundred seventy, fifty percent;
on or after July one, one thousand nine hundred seventy-
one, fifty-five percent; on or after July one, one thousand
nine hundred seventy-three, sixty percent; on or after
July one, one thousand nine hundred seventy-four,
eighty percent; on or after July one, one thousand nine
hundred seventy-five, one hundred percent.
The minimum weekly benefits paid hereunder shall not be less than twenty-six dollars per week for injuries occurring on or after July one, one thousand nine hundred sixty-nine; not less than thirty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-one; not less than forty dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-three; not less than forty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-four; and for injuries occurring on or after July one, one thousand nine hundred seventy-six, thirty-three and one-third percent of the average weekly wage in West Virginia, except as provided in section six-d of this article.

(c) Subdivision (b) 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) If the injury causes permanent total disability, benefits shall be payable during the remainder of life at the maximum or minimum weekly benefits as provided in subdivision (b) of this section for temporary total disability. A permanent disability of eighty-five percent or more shall be deemed a permanent total disability for the purpose of this section. Under no circumstances shall the commissioner grant an additional permanent disability award to a claimant receiving a permanent total disability award, or to a claimant who has previously been granted permanent disability awards totaling eighty-five percent or more and hence is entitled to a permanent total disability award: Provided, That if any such 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 such permanent total disability benefit rate shall be paid from the second injury reserve created by section one, article three of this chapter.
(e) If the injury causes permanent disability less than permanent total disability, the percentage of disability to total disability shall be determined and the award computed on the basis of four weeks' compensation for each percent of disability determined, at the following maximum or minimum benefit rates: Seventy percent of the average weekly wage earnings, wherever earned, of the injured employee, at the date of injury, not to exceed the percentage of the average weekly wage in West Virginia, as follows: On or after July one, one thousand nine hundred sixty-nine, forty-five percent; on or after July one, one thousand nine hundred seventy, fifty percent; on or after July one, one thousand nine hundred seventy-one, fifty-five percent; on or after July one, one thousand nine hundred seventy-three, sixty percent; on or after July one, one thousand nine hundred seventy-five, sixty-six and two-thirds percent.

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 commissioner, with the following table establishing the minimum percentage of disability. In determining the percentage of disability, the commissioner may be guided by, but shall not be limited to, the disabilities enumerated in the following table, and in no event shall the disability be less than that 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 five percent disability.

The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

The loss of middle or second 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 commissioner, 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 commissioner, 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 commis-
Ch. 12] WORKERS' COMPENSATION 1705

180 sioner makes the proper award for such injury, the
commisioner 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.

190 (g) Should a claimant to whom has been made a
permanent partial award of from one percent to eighty­
four percent, both inclusive, 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 clai­
ment 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.

200 (h) For the purposes of this chapter, a finding of the
occupational pneumoconiosis board shall have the force
and effect of an award.

205 (i) The award for permanent disabilities intermediate
to those fixed by the foregoing schedule and permanent
disability of from one percent to eighty-four percent
shall be the same proportion and shall be computed and
allowed by the commissioner.

210 (j) The percentage of all permanent disabilities other
than those enumerated in subdivision (f) of this section
shall be determined by the commissioner, and awards
made in accordance with the provisions of subdivision
(d) or (e) of this section. Where there has been an injury
to a member as distinguished from total loss by
severance of that member, the commissioner in deter­
mining the percentage of disability may be guided by
but shall not be limited to the disabilities enumerated
in subdivision (f) of this section.
(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.

(l) 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.

In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the provisions of subdivision (d) or (e).

(n) 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.

§23-4-6d. Benefits payable to part-time employees.

(a) For purposes of this section, a part-time employee
means an employee who, at the date of injury, is
customarily employed twenty-five hours per week or less
on a regular basis and is classified by the employer as
a part-time employee: Provided, That the term “part-
time employee” shall not include an employee who
regularly works more than twenty-five hours per week
for the employer, nor shall it include an employee who
regularly works for more than one employer and whose
regular combined working hours total more than
twenty-five hours per week when that employee is
rendered unable to perform the duties of all such
employment as a result of the injury, nor shall it include
any employee in the construction industry who works
less than twenty-five hours per week.

(b) For purposes of establishing temporary total
disability weekly benefits pursuant to subdivision (b),
section six of this article for part-time employees, the
“average weekly wage earnings, wherever earned, of the
injured person, at the date of injury”, shall be computed
based upon the average gross pay, wherever earned,
which is received by the employee during the two
months, six months or twelve months immediately
preceding the date of the injury, whichever is most
favorable to the injured employee: Provided, That for
part-time employees who have been employed less than
two months but more than one week prior to the date
of injury, the average weekly wage earnings shall be
calculated based upon the average gross earnings in the
weeks actually worked: Provided, however, That for
part-time employees who have been employed one week
or less, the average weekly wage earnings shall be
calculated based upon the average weekly wage prevail-
ing for the same or similar part-time employment at the
time of injury except that when an employer has agreed
to pay a certain hourly wage to such part-time employee,
the average weekly wage shall be computed by multipl-
ying such hourly wage by the regular numbers of hours
contracted to be worked each week: Provided further,
That notwithstanding any provision of this article to the
contrary, no part-time employee shall receive temporary
total disability benefits greater than his or her average
weekly wage earnings as so calculated.
(c) Notwithstanding any other provisions of this article to the contrary, benefits payable to a part-time injured employee for any permanent disability shall be computed and paid on the same basis as if the injured employee is not a part-time employee within the meaning of this section.

§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority.

(a) The Legislature hereby finds and declares that injured claimants should receive the type of treatment needed as promptly as possible; that overpayments of temporary total disability benefits with the resultant hardship created by the requirement of repayment should be minimized; and that to achieve these two objectives, it is essential that the commissioner establish and operate a systematic program for the monitoring of injury claims where the disability continues longer than might ordinarily be expected.

(b) In view of the foregoing findings, the commissioner, in consultation with medical experts, shall establish guidelines as to the anticipated period of disability for the various types of injuries. Each injury claim in which temporary total disability continues beyond the anticipated period of disability so established for the injury involved shall be reviewed by the commissioner. If satisfied, after reviewing the medical evidence, that the claimant would not benefit by an independent medical evaluation, the commissioner shall mark the claim file accordingly and shall diary such claim file as to the next date for required review which shall not exceed sixty days. If the commissioner concludes that the claimant might benefit by an independent medical evaluation, he or she shall proceed as specified in subsections (d) and (e) of this section.

(c) When the authorized treating physician concludes
that the claimant has either reached his or her maximum degree of improvement or is ready for disability evaluation, or when the claimant has returned to work, such authorized treating physician may recommend a permanent partial disability award for residual impairment relating to and resulting from the compensable injury, and the following provisions shall govern and control:

(1) If the authorized treating physician recommends a permanent partial disability award of fifteen percent or less, the commissioner shall enter an award of permanent partial disability benefits based upon such recommendation and all other available information, and the claimant's entitlement to temporary total disability benefits shall cease upon the entry of such award unless previously terminated under the provisions of subsection (e) of this section.

(2) If, however, the authorized treating physician recommends a permanent partial disability award in excess of fifteen percent, or recommends a permanent total disability award, the claimant's entitlement to temporary total disability benefits shall cease upon the receipt by the commissioner of such report and the commissioner shall refer the claimant to a physician or physicians of the commissioner's selection for independent evaluation prior to the entry of a permanent disability award: Provided, That the claimant shall thereupon receive benefits which shall then be at the permanent partial disability rate as provided in subdivision (e), section six of this article until the entry of a permanent disability award, and which amount of such benefits paid prior to the receipt of such report shall be considered and deemed to be payment of the permanent disability award then granted, if any. In the event that benefits actually paid exceed the amount granted by the permanent partial disability award, claimant shall be entitled to no further benefits by such award but shall not be liable by offset or otherwise for the excess paid.

(d) When the commissioner concludes that an independent medical evaluation is indicated, or that a
claimant may be ready for disability evaluation in accordance with other provisions of this chapter, the commissioner shall refer the claimant to a physician or physicians of the commissioner's selection for examination and evaluation. If the physician or physicians so selected recommend continued, additional or different treatment, the recommendation shall be relayed to the claimant and the claimant's then treating physician and the recommended treatment may be authorized by the commissioner.

(e) Notwithstanding any provision in subsection (c) of this section, the commissioner shall enter a notice suspending the payment of temporary total disability benefits but providing a reasonable period of time during which the claimant may submit evidence justifying the continued payment of temporary total disability benefits when:

(1) The physician or physicians selected by the commissioner conclude that the claimant has reached his or her maximum degree of improvement; or

(2) When the authorized treating physician shall advise the commissioner that the claimant has reached his or her maximum degree of improvement or that he or she is ready for disability evaluation and when the authorized treating physician has not made any recommendation with respect to a permanent disability award as provided in subsection (c) of this section; or

(3) When other evidence submitted to the commissioner justifies a finding that the claimant has reached his or her maximum degree of improvement: Provided, That in all cases a finding by the commissioner that the claimant has reached his or her maximum degree of improvement shall terminate the claimant's entitlement to temporary total disability benefits regardless of whether the claimant has been released to return to work: Provided, however, That under no circumstances shall a claimant be entitled to receive temporary total disability benefits either beyond the date the claimant is released to return to work or beyond the date he or she actually returns to work.
109 In the event that the medical or other evidence indicates that claimant has a permanent disability, claimant shall thereupon receive benefits which shall then be at the permanent partial disability rate as provided in subdivision (e), section six of this article until entry of a permanent disability award, pursuant to an evaluation by a physician or physicians selected by the commissioner, and which amount of benefits shall be considered and deemed to be payment of the permanent disability award then granted, if any. In the event that benefits actually paid exceed the amount granted under the permanent disability award, claimant shall be entitled to no further benefits by such order but shall not be liable by offset or otherwise for the excess paid.

(f) Notwithstanding the anticipated period of disability established pursuant to the provisions of subsection (b) of this section, whenever in any claim temporary total disability shall continue longer than one hundred twenty days from the date of injury (or from the date of the last preceding examination and evaluation pursuant to the provisions of this subsection or pursuant to the directions of the commissioner under other provisions of this chapter), the commissioner shall refer the claimant to a physician or physicians of the commissioner's selection for examination and evaluation in accordance with the provisions of subsection (d) of this section and the provisions of subsection (e) of this section shall be fully applicable: Provided, That the requirement of mandatory examinations and evaluations pursuant to the provisions of this subsection (f) shall not apply to any claimant who sustained a brain stem or spinal cord injury with resultant paralysis or an injury which resulted in an amputation necessitating a prosthetic appliance.

(g) The provisions of this section are in addition to and in no way in derogation of the power and authority vested in the commissioner by other provisions of this chapter or vested in the employer to have a claimant examined by a physician or physicians of the employer's selection and at the employer's expense, or vested in the
claimant or employer to file a protest, under other provisions of this chapter.

(h) All evaluations and examinations performed by physicians shall be performed in accordance with the protocols and procedures established by the health care advisory panel pursuant to section three-b of this article:

Provided, That the physician may exceed these protocols when additional evaluation is medically necessary.

§23-4-7b. Trial return to work.

(a) The Legislature hereby finds and declares that it is in the interest of employees, employers and the commissioner that injured employees be encouraged to return to work as quickly as possible after an injury and that appropriate protections be afforded to injured employees who return to work on a trial basis.

(b) Notwithstanding any other provisions of this chapter to the contrary, the injured employee shall not have his or her eligibility to receive temporary total disability benefits terminated when he or she returns to work on a trial basis as set forth herein. An employee shall be eligible to return to work on a trial basis when he or she is released to work on a trial basis by the treating physician.

(c) When an injured employee returns to work on a trial basis, the employer shall provide a trial return to work notification to the commissioner. Upon receipt thereof, the commissioner shall note the date of the first day of work pursuant to the trial return and shall continue the claimant's eligibility for temporary total disability benefits, but shall temporarily suspend the payment of temporary total disability benefits during the period actually worked by the injured employee. The claim shall be closed on a temporary total disability basis either when the injured employee or the authorized treating physician notifies the commissioner that the injured employee is able to perform his or her job or automatically at the end of a period of three months from the date of the first day of work unless the employee notifies the commissioner that he or she is unable to perform the duties of the job, whichever
occurs first. If the injured employee is unable to continue working due to the compensable injury for a three month period, the injured employee shall notify the commissioner and temporary total disability benefits shall be reinstated immediately and he or she shall be referred for a rehabilitation evaluation as provided in section nine of this article. No provision of this section shall be construed to prohibit the commissioner from referring the injured employee for any permanent disability evaluation required or permitted by any other provision of this article.

(d) Nothing in this section shall prevent the employee from returning to work without a trial return to work period.

(e) Nothing in this section shall be construed to require an injured employee to return to work on a trial basis.

(f) The provisions of this section shall be terminated and be of no further force and effect on the first day of July, one thousand nine hundred ninety-four.

§23-4-8. Physical examination of claimant.

The commissioner shall have authority, after due notice to the employer and claimant, whenever in the commissioner's opinion it shall be necessary, to order a claimant of compensation for a personal injury other than occupational pneumoconiosis to appear for examination before a medical examiner or examiners selected by the commissioner; and the claimant and employer, respectively, shall each have the right to select a physician of the claimant's or the employer's own choosing and at the claimant's or the employer's own expense to participate in such examination. All such examinations shall be performed in accordance with the protocols and procedures established by the health care advisory panel pursuant to section three-b of this article: Provided, That the physician may exceed these protocols when additional evaluation is medically necessary. The claimant and employer shall, respectively, be furnished with a copy of the report of examination made by the medical examiner or examiners selected by the commis-
The respective physicians selected by the claimant and employer shall have the right to concur in any report made by the medical examiner or examiners selected by the commissioner, or each may file with the commissioner a separate report, which separate report shall be considered by the commissioner in passing upon the claim. If the compensation claimed is for occupational pneumoconiosis, the commissioner shall have the power, after due notice to the employer, and whenever in the commissioner's opinion it shall be necessary, to order a claimant to appear for examination before the occupational pneumoconiosis board hereinafter provided. In any case the claimant shall be entitled to reimbursement for loss of wages, and to reasonable traveling and other expenses necessarily incurred by him or her in obeying such order.

Where the claimant is required to undergo a medical examination or examinations by a physician or physicians selected by the employer, as aforesaid or in connection with any claim which is in litigation, the employer shall reimburse the claimant for loss of wages, and reasonable traveling and other expenses in connection with such examination or examinations, not to exceed the expenses paid when a claimant is examined by a physician or physicians selected by the commissioner.

§23-4-8c. Occupational pneumoconiosis board—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.

(a) The occupational pneumoconiosis board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commissioner, of its findings and conclusions on every medical question in controversy, and the commissioner shall send one copy thereof to the employee or claimant and one copy to the employer, and the board shall also return to and file with the commissioner all the evidence as well as all statements under oath, if any, of the persons who appear before it on behalf of the employee or claimant, or employer and also all medical reports and X-ray
examinations produced by or on behalf of the employee or claimant, or employer.

(b) If it can be shown that the claimant or deceased employee has been exposed to the hazard of inhaling minute particles of dust in the course of and resulting from his or her employment for a period of ten years during the fifteen years immediately preceding the date of his or her last exposure to such hazard and that such claimant or deceased employee has sustained a chronic respiratory disability, then it shall be presumed that such claimant is suffering or such deceased employee was suffering at the time of his or her death from occupational pneumoconiosis which arose out of and in the course of his or her employment. This presumption shall not be conclusive.

(c) The findings and conclusions of the board shall set forth, among other things, the following:

(1) Whether or not the claimant or the deceased employee has contracted occupational pneumoconiosis, and if so, the percentage of permanent disability resulting therefrom.

(2) Whether or not the exposure in the employment was sufficient to have caused the claimant’s or deceased employee’s occupational pneumoconiosis or to have perceptibly aggravated an existing occupational pneumoconiosis, or other occupational disease.

(3) What, if any, physician appeared before the board on behalf of the claimant or employer, and what, if any, medical evidence was produced by or on behalf of the claimant or employer.

If either party objects to the whole or any part of such findings and conclusions of the board, such party shall file with the commissioner or, on or after the first day of July, one thousand nine hundred ninety-one, with the office of judges, within thirty days from receipt of such copy to such party, unless for good cause shown, the commissioner or chief administrative law judge extends such time, such party’s objections thereto in writing, specifying the particular statements of the board’s
findings and conclusions to which such party objects. The filing of an objection within the time specified is hereby declared to be a condition of the right to litigate such findings and hence jurisdictional. After the time has expired for the filing of objections to the findings and conclusions of the board, the commissioner or administrative law judge shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions therein stated. If objection has been filed to the findings and conclusions of the board, notice thereof shall be given to the board, and the members thereof joining in such findings and conclusions shall appear at the time fixed by the commissioner or office of judges for the hearing to submit to examination and cross-examination in respect to such findings and conclusions. At such hearing, evidence to support or controvert the findings and conclusions of the board shall be limited to examination and cross-examination of the members of the board, and to the taking of testimony of other qualified physicians and roentgenologists.

§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 employ-
ment, 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 re-employment for the injured employee.

(b) In cases where an employee has sustained a permanent disability, or has sustained an injury likely to result in temporary disability in excess of one hundred twenty days, and such fact has been determined by the commissioner, the commissioner 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 physically and vocationally rehabilitated and returned to remunerative 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 equipment 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 rehabilitation 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 receiving vocational rehabilitation services in accordance with a rehabilitation plan developed under this section.

(e) The commissioner shall promulgate legislative rules on or before the first day of July, one thousand nine hundred ninety-one, pursuant to the provisions of article three, chapter twenty-nine-a of this code 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 legislative rules shall provide definitions for rehabilitation facilities and rehabilitation services pursuant to this section.

(f) The provisions of this section shall be terminated and be of no further force or effect on the first day of July, one thousand nine hundred ninety-four.


1 The average weekly wage earnings, wherever earned, of the injured person at the date of injury, and the average weekly wage in West Virginia as determined by the commissioner of employment security, in effect at the date of injury, shall be taken as the basis upon which to compute the benefits.

In cases involving occupational pneumoconiosis or other occupational diseases, the “date of injury” shall be the date of the last exposure to the hazards of occupational pneumoconiosis or other occupational diseases.

In computing benefits payable on account of occupational pneumoconiosis, the commissioner shall deduct
the amount of all prior workers' compensation benefits paid to the same claimant on account of silicosis, but a prior silicosis award shall not, in any event, preclude an award for occupational pneumoconiosis otherwise payable under this article.

The expression “average weekly wage earnings, wherever earned, of the injured person, at the date of injury”, within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the average pay received during the two months, six months or twelve months immediately preceding the date of the injury, whichever is most favorable to the injured employee, 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.

The expression “average weekly wage in West Virginia”, within the meaning of this chapter, shall be the average weekly wage in West Virginia as determined by the commissioner of employment security in accordance with the provisions of sections ten and eleven, article six, chapter twenty-one-a of this code, and other applicable provisions of said chapter twenty-one-a.

In any claim for injuries, including occupational pneumoconiosis and other occupational diseases, occurring on or after July one, one thousand nine hundred seventy-one, any award for temporary total, permanent partial or permanent total disability benefits or for dependent benefits, shall be paid at the weekly rates or in the monthly amount in the case of dependent benefits applicable to the claimant therein in effect on the date of such injury. If during the life of such award for temporary total, permanent partial or permanent total disability benefits or for dependent benefits, the weekly rates or the monthly amount in the case of dependent benefits are increased or decreased, the claimant shall receive such increased or decreased benefits beginning as of the effective date of said increase or decrease.
§23-4-15b. Determination of nonmedical questions by commissioner; claims for occupational pneumoconiosis; hearing.

If a claim for occupational pneumoconiosis benefits be filed by an employee within three years from and after the last day of the last continuous period of sixty days exposure to the hazards of occupational pneumoconiosis, the commissioner shall determine whether the claimant was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within three years prior to the filing of his or her claim, whether in the state of West Virginia the claimant was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his or her last exposure thereto and whether the claimant was exposed to such hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his or her last exposure thereto. If a claim for occupational pneumoconiosis benefits be filed by an employee within three years from and after the employee's occupational pneumoconiosis was made known to the employee by a physician or otherwise should have reasonably been known to the employee, the commissioner shall determine whether the claimant filed his or her application within said period and whether in the state of West Virginia the claimant was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of last exposure thereto and whether the claimant was exposed to such hazard over a period of not less than ten years during the fifteen years immediately preceding the date of last exposure thereto. If a claim for occupational pneumoconiosis benefits be filed by a dependent of a deceased employee, the commissioner shall determine whether the deceased employee was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within ten years prior to the filing of the claim, whether in the state of West Virginia the deceased employee was exposed to such hazard over a continuous period of not
less than two years during the ten years immediately preceding the date of his or her last exposure thereto and whether the claimant was exposed to such hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his or her last exposure thereto. The commissioner shall also determine such other nonmedical facts as may in the commissioner's opinion be pertinent to a decision on the validity of the claim.

The commissioner shall enter an order with respect to such nonmedical findings within ninety days following receipt by the commissioner of both the claimant's application for occupational pneumoconiosis benefits and the physician's report filed in connection therewith, and shall give each interested party notice in writing of these findings with respect to all such nonmedical facts and such findings and such actions of the commissioner shall be final unless the employer, employee, claimant or dependent shall, within thirty days after receipt of such notice, object to such findings, and unless an objection is filed within such thirty-day period, such findings shall be forever final, such time limitation being hereby declared to be a condition of the right to litigate such findings and hence jurisdictional. Upon receipt of such objection, the commissioner shall set a hearing as provided in section one, article five of this chapter or the chief administrative law judge shall set a hearing as provided in section one-h, article five of this chapter. In the event of an objection to such findings by the employer, the claim shall, notwithstanding the fact that one or more hearings may be held with respect to such objection, mature for reference to the occupational pneumoconiosis board with like effect as if the objection had not been filed. If the commissioner or administrative law judge concludes after the protest hearings that the claim should be dismissed, a final order of dismissal shall be entered, which final order shall be subject to appeal in accordance with the provisions of section one or section one-i and section three, article five of this chapter. If the commissioner or administrative law judge concludes after such protest hearings that the claim should be referred to the occupational pneumo-
niosis board for its review, the order entered shall be
interlocutory only and may be appealed only in conjunc-
tion with an appeal from a final order with respect to
the findings of the occupational pneumoconiosis board.

§23-4-19. Wrongfully seeking compensation; criminal
penalties; restitution.

Any person who shall knowingly and with fraudulent
intent secure or attempt to secure larger compensation,
or compensation for a longer term than he or she is
entitled to, from the workers' compensation fund, or
knowingly and with like intent secure or attempt to
secure compensation from such fund when he or she is
not entitled thereto, or shall knowingly and with like
intent aid and abet anyone in the commission of the
offenses herein set forth, shall be guilty of a misdemea-
nor, and, upon conviction thereof, shall be fined not
exceeding five thousand dollars, or imprisoned not
exceeding twelve months, or both, and 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 commissioner or self-insured
employer as the result of the violation of this section. If
the person so convicted is receiving compensation from
such fund, he or she shall, from and after such
conviction, cease to receive such compensation.

ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.


(a) No disbursements shall be made from the
workers' compensation fund on account of any provision
of this article: Provided, That the Legislature may at
any time merge, consolidate, alter or liquidate this fund
as it may determine and in no instance shall the
operation of this article be construed as creating any
contract which would deprive any injured employee of
future benefits or increases awarded by an act of
Congress, nor shall this section operate to create any
liability upon the state of West Virginia.

(b) The Legislature hereby finds and declares that
there is a substantial actuarial surplus in the coal-
workers' pneumoconiosis fund in excess of two hundred million dollars. The Legislature further finds and declares that there is a substantial actuarial deficit in the workers' compensation fund in excess of four hundred million dollars, and that this deficit is in large part attributable to claims arising out of the coal industry. The commissioner is hereby directed to conduct an actuarial audit to determine the amount, computed at book value, of the actuarial surplus in the coal-workers' pneumoconiosis fund as of the thirtieth day of June, one thousand nine hundred ninety, and to certify such amount, as of that date, in a written order which together with the results of said audit shall be a public record. Notwithstanding the provisions of subsection (a) of this section or any other provision of this article to the contrary, the commissioner shall, by written order, transfer the assets underlying said surplus to the workers' compensation fund, which assets shall thereupon become merged into and consolidated with the workers' compensation fund: Provided, That the value of the assets so transferred, when computed according to the book value of said assets on the date of transfer, shall not exceed two hundred fifty million dollars: Provided, however, That such assets so transferred shall be held in a separate account and shall not be used for the satisfaction of obligations of the workers' compensation fund until all other assets of the workers' compensation fund have been expended: Provided further, That the income earned, from time to time, on the assets so transferred may be used to satisfy obligations of the workers' compensation fund: And provided further, That a sufficient reserve shall be retained in the coal-workers' pneumoconiosis fund to guarantee the payment of all claims incurred, including claims which were incurred but not reported, on or before the thirtieth day of June, one thousand nine hundred ninety: And provided further, That any moneys due and owing to the coal-workers' pneumoconiosis fund as a result of any transfer of moneys pursuant to section eight-a of this article shall be construed as an asset of the coal-workers' pneumoconiosis fund and shall be included as an asset transferred to the workers'
compensation fund under the provisions of this section. If at any time subsequent to the transfer of the aforesaid assets to the workers' compensation fund, the standards for obtaining benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended and as subsequently amended, are changed such that the actuarial audit performed hereunder may no longer accurately reflect the liabilities of the coal-workers' pneumoconiosis fund for claims arising prior to the first day of July, one thousand nine hundred ninety, the commissioner shall promptly conduct a new audit to determine whether any portion of the foregoing separate account should be returned to the coal-workers' pneumoconiosis fund in order to provide adequate reserves for claims arising prior to the first day of July, one thousand nine hundred ninety, and, if the results of such new audit determine that said reserves are inadequate, the commissioner shall transfer back to the coal-workers' pneumoconiosis fund that portion of the assets in the separate account necessary to provide adequate reserves for such claims.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commissioner of decision; objections and hearing; appeal.

§23-5-1a. Application by employee for further adjustment of claim—Objection to modification; hearing.

§23-5-1b. Refusal to reopen claim; notice; objection.

§23-5-1c. Application by employer for modification of award—Objection to modification; hearing.

§23-5-1d. Refusal of modification; notice; objection.

§23-5-1e. Time periods for objections and appeals; extensions.

§23-5-1f. Compromise and settlement of permanent partial disability awards.

§23-5-1g. Creation of office of administrative law judges; powers of chief administrative law judge and said office.

§23-5-1h. Hearings on objections to commissioner's decisions by office of administrative law judges.

§23-5-1i. Appeal from administrative law judge decision to appeal board.

§23-5-3. Appeal to board; procedure; remand and supplemental hearing.

§23-5-3a. Continuances and supplemental hearings; claims not to be denied on technicalities.

§23-5-4b. Jurisdictional findings and decisions appealable.

§23-5-1. Notice by commissioner of decision; objections and hearing; appeal.

1 The commissioner shall have full power and authority
to hear and determine all questions within his or her
jurisdiction, but upon the making or refusing to make
any award, or upon the making of any modification or
change with respect to former findings or orders, as
provided by section sixteen, article four of this chapter,
the commissioner shall give notice, in writing, to the
employer, employee, claimant or dependent, as the case
may be, of his or her action, which notice shall state the
time allowed for filing an objection to such finding, and
such action of the commissioner shall be final unless the
employer, employee, claimant or dependent shall, within
thirty days after the receipt of such notice, object in
writing, to such finding; and unless an objection is filed
within such thirty-day period, such finding or action
shall be forever final, such time limitation being hereby
declared to be a condition of the right to litigate such
finding or action and hence jurisdictional. Upon receipt
of such objection the commissioner shall, within fifteen
days from receipt thereof, set a time and place for the
hearing of evidence. Any such hearing may be con-
ducted by the commissioner or the commissioner's duly
authorized representative at the county seat of the
county wherein the injury occurred, or at any other
place which may be agreed upon by the interested
parties, and in the event the interested parties cannot
agree, and it appears in the opinion of the commissioner
that the ends of justice require the taking of evidence
elsewhere, then at such place as the commissioner may
direct, having due regard for the convenience of
witnesses. Both the employer and claimant shall be
notified of such hearing at least ten days in advance, and
the hearing shall be held within thirty days after the
filing of objection to the commissioner's findings as
hereinabove provided, unless such hearing be postponed
by agreement of the parties or by the commissioner for
good cause. The evidence taken at such hearing shall be
transcribed and become part of the record of the
proceedings, together with the other records thereof in
the commissioner's office. At any time within thirty days
after hearing, if the commissioner is of the opinion that
the facts have not been adequately developed at such
hearing, he or she may order supplemental hearings
upon due notice to the parties. After final hearing the
commissioner shall, within thirty days, render his or her
decision affirming, reversing or modifying his or her
former action, which shall be final: Provided, That the
claimant or the employer may apply to the appeal board
herein created for a review of such decision; but no
appeal or review shall lie unless application therefor be
made within thirty days of receipt of notice of the
commissioner's final action, or in any event within sixty
days of the date of such final action, regardless of notice,
and unless the application for appeal or review is filed
within the time specified, no such appeal or review shall
be allowed, such time limitation being hereby declared
to be a condition of the right to such appeal or review
and hence jurisdictional.

All objections to commissioner's decisions filed prior
to the first day of July, one thousand nine hundred
ninety-one, shall be handled in accordance with the
foregoing procedures set forth in this section. All
objections to commissioner's decisions which are not
appealable to the appeal board and which are filed on
or after the first day of July, one thousand nine hundred
ninety-one, shall be filed with the office of judges in
accordance with the procedures set forth in section one-
g and section one-h of this article.

Any proceeding on an objection in which the com-}
missioner has not concluded hearings and issued a final
order appealable to the appeal board on or before the
thirty-first day of December, one thousand nine hundred
ninety-one, shall be transferred to the office of judges
for final resolution. If additional evidentiary hearings
are necessary in any matter so transferred, such
hearings shall be conducted in accordance with section
one-h of this article. Decisions on transferred cases shall
likewise be rendered in accordance with section one-h
of this article.

Where a finding or determination of the commissioner
is protested only by the employer, and the employer does
not prevail in its protest and, in the event the claimant
is required to attend a hearing by subpoena or agree-
§23-5-1a. Application by employee for further adjustment of claim—Objection to modification; hearing.

In any case where an injured employee makes application in writing for a further adjustment of his or her claim under the provisions of section sixteen, article four of this chapter, and such application discloses cause for a further adjustment thereof, the commissioner shall, after due notice to the employer, make such modifications or changes with respect to former findings or orders in such claim as may be justified, and any party dissatisfied with any such modification or change so made by the commissioner shall, upon proper and timely objection, be entitled to a hearing, as provided in section one or section one-h of this article.

§23-5-1b. Refusal to reopen claim; notice; objection.

If, however, in any case in which application for further adjustment of a claim is filed under the next preceding section, it shall appear to the commissioner that such application fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not theretofore considered by the commissioner in his or her former findings, and which would entitle such claimant to greater benefits than the claimant has already received, the commissioner shall, within sixty days from the receipt of such application, notify the claimant and the employer that such application fails to establish a prima facie cause for reopening the claim. Such notice shall be in writing stating the reasons for denial and the time allowed for objection to such decision of the commissioner. The claimant may, within thirty days after receipt of such notice, object in writing to such finding and unless the objection is filed within such thirty-day period, no such objection shall be allowed, such time limitation being
hereby declared to be a condition of the right to such
objection and hence jurisdictional. Upon receipt of an
objection, the commissioner or office of judges shall
afford the claimant an evidentiary hearing as provided
in section one or section one-h of this article.

§23-5-1c. Application by employer for modification of
award—Objection to modification; hearing.

In any case wherein an employer makes application
in writing for a modification of any award previously
made to an employee of said employer, and such
application discloses cause for a further adjustment
thereof, the commissioner shall, after due notice to the
employee, make such modifications or changes with
respect to former findings or orders in such form as may
be justified, and any party dissatisfied with any such
modification or change so made by the commissioner,
shall upon proper and timely objection, be entitled to a
hearing as provided in section one or section one-h of
this article.

§23-5-1d. Refusal of modification; notice; objection.

If in any such case it shall appear to the commissioner
that such application fails to disclose some fact or facts
which were not theretofore considered by the commis-
sioner in his or her former findings, and which would
entitle such employer to any modification of said
previous award, the commissioner shall, within sixty
days from the receipt of such application, notify the
claimant and employer that such application fails to
establish a just cause for modification of said award.
Such notice shall be in writing stating the reasons for
denial and the time allowed for objection to such
decision of the commissioner. The employer may, within
thirty days after receipt of said notice, object in writing
to such decision, and unless the objection is filed within
such thirty-day period, no such objection shall be
allowed, such time limitation being hereby declared to
be a condition of the right to such objection and hence
jurisdictional. Upon receipt of such objection, the
commissioner or office of judges shall afford the
employer an evidentiary hearing as provided in section
one or section one-h of this article.
§23-5-1e. Time periods for objections and appeals; extensions.

Notwithstanding the fact that the time periods set forth for objections, protests, and appeals to or from the workers’ compensation appeal board, are jurisdictional, such periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of such time period showing good cause or excusable neglect, accompanied by the objection, protest, or appeal petition. In exercising such discretion the commissioner, administrative law judge, appeal board, or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant’s representative.

§23-5-1f. Compromise and settlement of permanent partial disability awards.

(a) After an objection is filed to a commissioner’s decision either granting a permanent partial disability award of fifteen percent or less, or making no award upon a finding that no permanent partial disability was suffered as the result of the injury received, the parties may agree to compromise and settle the award in controversy under the conditions and limitations set out in this section. In addition, a reopening petition resulting in an increased permanent partial disability award of fifteen percent or less may similarly be compromised and settled. No other types of settlements shall be permitted. The terms of such settlement shall be reviewed by the administrative law judge as herein provided.

(b) In any claim involving an employer not electing to carry its own risk within the meaning of section nine, article two of this chapter, the parties shall notify the commissioner of their intent to settle a claim and the commissioner may participate, at his or her discretion, as a party in interest in any settlement proceeding under this section.
(c) The parties seeking to settle and compromise an objection to a commissioner's decision described in subsection (a) of this section shall jointly file with the chief administrative law judge a written memorandum of settlement, signed by all parties in interest. An administrative law judge shall review the written memorandum to determine if it is reasonable and fair, after giving due consideration to the interests of all parties, and if it is in conformity with the provisions of this chapter. The administrative law judge, in his or her discretion, may hear testimony relating to any proposed settlement. If the administrative law judge finds the settlement to be fair and reasonable, he or she shall issue an order so finding which shall, for all purposes, constitute an order appealable to the appeal board as provided under sections one and three of this article. If the settlement is not approved by the administrative law judge, the settlement agreement between the parties shall be null and void, and the administrative law judge shall issue an order so finding which shall be appealable to the appeal board.

(d) A settlement may provide for a final award of greater than fifteen percent permanent partial disability: Provided, That no settlement shall be approved which provides for or would result in a permanent total disability or second injury life award.

(e) The amounts of compensation payable under a settlement may be commuted to one or more lump sum payments by agreement of the parties.

(f) A party seeking to vacate an order approving a settlement on the grounds that a settlement was obtained by fraud, undue influence or coercion shall file a petition therefor with the office of judges within six months after the date of the order approving the settlement. The petition shall set forth in particular the facts upon which the grounds alleged therein are based and shall be served upon all other parties to the settlement. Upon request by any party to the settlement, the chief administrative law judge shall set the matter down for hearing. At the conclusion thereof, the chief administrative law judge shall enter an order setting
forth his or her findings of fact and conclusions of law, which order shall be appealable to the appeal board. Upon a finding, by clear and convincing evidence, that the settlement was obtained by fraud, undue influence or coercion, the chief administrative law judge shall vacate and set aside the order approving the settlement.

(g) A settlement approved by the administrative law judge shall be final and binding as to the particular award in controversy but shall not affect any right under article four of this chapter to future medical benefits, to physical and vocational rehabilitation, or the right to seek a reopening of the claim pursuant to section sixteen, article four of this chapter and section one-a of this article.

(h) For matters pending before the commissioner on the first day of July, one thousand nine hundred ninety, or thereafter, the foregoing procedures for settlement shall apply except the commissioner shall act in the place of the administrative law judge or chief administrative law judge.

§23-5-1g. Creation of office of administrative law judges; powers of chief administrative law judge and said office.

(a) There is hereby created within the workers' compensation appeal board the workers' compensation office of administrative law judges which shall be referred to as the office of judges. 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.

(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 appeal board created in section two of this article. 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 of chapter twenty-nine of this code. The chief administrative law judge may
only be removed by the appeal board 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 then only
in the manner prescribed in article six-a of chapter
twenty-nine of this code. 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 such
additional administrative law judges and other person-
nel as are necessary for the proper conduct of a system
of administrative review of orders issued by the
commissioner 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 by the appeal board in its annual
budget when it submits that budget to the commissioner
pursuant to section two of this article.

(e) With the advice and consent of the commissioner,
on or before the first day of May, one thousand nine
hundred ninety-one, the appeal board shall promulgate
rules of practice and procedure for the hearing and
determination of all objections to findings or orders of
the commissioner pursuant to section one of this article
and for the settlement of claims pursuant to section one-f of this article. Such rules of practice and procedure shall be promulgated in accordance with the provisions of article three of chapter twenty-nine-a of this code. The appeal board shall not have the power to promulgate legislative rules as that phrase is defined in article three of chapter twenty-nine-a of this code.

(f) On and after the first day of July, one thousand nine hundred ninety-one, the chief administrative law judge shall have the power, which shall be delegated by the appeal board, 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, review and approve agreements to compromise and settle claims involving permanent partial disability awards permitted by the provisions of section one-f, article five of this chapter, and exercise such additional powers, including the delegation of such powers to administrative law judges or hearing examiners as may be necessary for the proper conduct of a system of administrative review of disputed claims.

§23-5-1h. Hearings on objections to commissioner's decisions by office of administrative law judges.

On or after the first day of July, one thousand nine hundred ninety-one, objections to a commissioner's 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, within fifteen days from receipt thereof, set a time and place for the hearing of evidence and shall notify the commissioner of the filing of the objection. Hearings may be conducted at the county seat of the county wherein the injury occurred, or at any other place which may be agreed upon by the interested parties, and in the event the interested parties cannot agree, and it appears in the opinion of the chief administrative law
judge or the chief administrative law judge's authorized
representative that the ends of justice require the taking
of evidence elsewhere, then at such place as the chief
administrative law judge or such authorized representa-
tive may direct, having due regard for the convenience
of witnesses. The employer, the claimant and the
commissioner shall be notified of such hearing at least
ten days in advance, and the hearing shall be held
within thirty days after the filing of the objection unless
such hearing be postponed by agreement of the parties
or by the chief administrative law judge or such
authorized representative for good cause. The commis-
sioner shall be considered a party to any proceeding
under this article which involves a claim chargeable
against the workers' compensation fund, the disabled
workers' relief fund or such other fund as may then be
under the commissioner's management and control, and
may appear only in any proceedings involving a claim
that is or may be asserted against any portion of the
surplus fund or any claim in which the employer fails
to appear.

The office of judges shall keep full and complete
records of all proceedings concerning a disputed claim.
All testimony upon a disputed claim shall be recorded
but need not be transcribed unless the claim is appealed
or in such other circumstances as, in the opinion of the
chief administrative law judge, may require such
transcription. Upon receipt of notice of the filing of an
objection, the commissioner shall forthwith forward to
the chief administrative law judge all records, or copies
of such records, in the commissioner's office which
relate to the matter objected to. All such records or
copies thereof and any evidence taken at hearings
conducted by the office of judges shall constitute the
record upon which the matter shall be decided. The
office of judges shall not be bound by the usual common
law or statutory rules of evidence. At any time within
thirty days after hearing, if the chief administrative law
judge or the chief administrative law judge's authorized
representative is of the opinion that the facts have not
been adequately developed at such hearing, he or she
may order supplemental hearings or obtain such
additional evidence as he or she deems warranted upon
due notice to the parties.

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
one-g of this article. Upon consideration of the entire
record, the chief administrative law judge or an
administrative law judge within the office of judges
shall, within thirty days after final hearing, render a
decision affirming, reversing or modifying the commis-
sioner's action. Said decision shall contain findings of
fact and conclusions of law and shall be mailed to all
interested parties.

§23-5-1i. Appeal from administrative law judge decision
to appeal board.

The employer, claimant or commissioner may appeal
to the appeal board created in section two of this article
for a review of a decision by an administrative law
judge. No appeal or review shall lie unless application
therefor be made within thirty days of receipt of notice
of the administrative law judge's final action or in any
event within sixty days of the date of such final action,
regardless of notice and, unless the application for
appeal or review is filed within the time specified, no
such appeal or review shall be allowed, such time
limitation being hereby declared to be a condition of the
right of such appeal or review and hence jurisdictional.

§23-5-3. Appeal to board; procedure; remand and supple-
mental hearing.

Any employer, employee, claimant, or dependent, who
shall feel aggrieved at any final action of the commis-
ioner or administrative law judge taken after a hearing
held in accordance with the provisions of section one or
section one-h of this article, shall have the right to
appeal to the board created in section two of this article
for a review of such action. The commissioner shall
likewise have the right to appeal to the appeal board any
final action taken in a proceeding in which he or she
is a party. The aggrieved party shall file a written notice
of appeal with the compensation commissioner or, after
the first day of July, one thousand nine hundred ninety-
one, with the office of judges directed to such board, within thirty days after receipt of notice of the action complained of, or in any event, regardless of notice, within sixty days after the date of the action complained of, and unless the notice of appeal is filed within the time specified, no such appeal shall be allowed, such time limitation being hereby declared to be a condition of the right to such appeal and hence jurisdictional; and the commissioner or the office of judges shall notify the other parties immediately upon the filing of a notice of appeal. The commissioner or the office of judges shall forthwith make up a transcript of the proceedings before the commissioner or the office of judges and certify and transmit the same to the board. Such certificate shall incorporate a brief recital of the proceedings therein had and recite each order entered and the date thereof. The board shall review the action of the commissioner or administrative law judge complained of at its next meeting after the filing of notice of appeal, provided such notice of appeal shall have been filed thirty days before such meeting of the board, unless such review be postponed by agreement of parties or by the board for good cause. The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof, and briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. And thereupon, after a review of the case, the board shall sustain the finding of the commissioner or administrative law judge or enter such order or make such award as the commissioner or administrative law judge should have made, stating in writing its reasons thereof, and shall thereupon certify the same to the commissioner, or chief administrative law judge, who shall proceed in accordance therewith. Or, instead of affirming or reversing the commissioner or administrative law judge as aforesaid, the board may, upon motion of either party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the commissioner or chief administrative law judge for the taking of such new, additional or further evidence as in the opinion of the board may be necessary
for a full and complete development of the facts of the case. In the event the board shall remand the case to the commissioner or chief administrative law judge for the taking of further evidence therein, the commissioner or administrative law judge shall proceed to take such new, additional or further evidence in accordance with any instruction given by the board, and shall take the same within thirty days after receipt of the order remanding the case, giving to the interested parties at least ten days' written notice of such supplemental hearing, unless the taking of evidence shall be postponed by agreement of parties, or by the commissioner or administrative law judge for good cause. After the completion of such supplemental hearing, the commissioner or administrative law judge shall, within sixty days, render his or her decision affirming, reversing or modifying the former action of the commissioner or administrative law judge, which decision shall be appealable to, and proceeded with by the appeal board in like manner as in the first instance. The board may remand any case as often as in its opinion is necessary for a full development and just decision of the case. The board may take evidence or consider ex parte statements furnished in support of any motion to remand the case to the commissioner or chief administrative law judge. All evidence taken by or filed with the board shall become a part of the record. All appeals from the action of the commissioner or administrative law judge shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record. In all proceedings before the board, any party may be represented by counsel.

§23-5-3a. Continuances and supplemental hearings; claims not to be denied on technicalities.

It is the policy of this chapter that the rights of claimants for workers' compensation be determined as speedily and expeditiously as possible to the end that those incapacitated by injuries and the dependents of deceased workers may receive benefits as quickly as possible in view of the severe economic hardships which
immediately befall the families of injured or deceased workers. Therefore, the criteria for continuances and supplemental hearings “for good cause shown” are to be strictly construed by the commissioner and chief administrative law judge and their authorized representatives to prevent delay when granting or denying continuances and supplemental hearings. It is also the policy of this chapter to prohibit the denial of just claims of injured or deceased workers or their dependents on technicalities.

§23-5-4b. Jurisdictional findings and decisions appealable.

In any case where the jurisdiction of the commissioner or chief administrative law judge is contested, the order of the commissioner or chief administrative law judge in respect thereto shall be deemed final for the purpose of appeal to the board and any decision of the board in respect to such questions of jurisdiction shall be deemed final for the purpose of appeal to the supreme court of appeals.

ARTICLE 5A. DISCRIMINATORY PRACTICES.

§23-5A-3. Termination of injured employee prohibited; re-employment of injured employees.

(a) It shall be a discriminatory practice within the meaning of section one of this article to terminate an injured employee while the injured employee is off work due to a compensable injury within the meaning of article four of this chapter and is receiving or is eligible to receive temporary total disability benefits, unless the injured employee has committed a separate dischargeable offense. A separate dischargeable offense shall mean misconduct by the injured employee wholly unrelated to the injury or the absence from work resulting from the injury. A separate dischargeable offense shall not include absence resulting from the injury or from the inclusion or aggregation of absence due to the injury with any other absence from work.

(b) It shall be a discriminatory practice within the meaning of section one of this article for an employer
to fail to reinstate an employee who has sustained a compensable injury to the employee's former position of employment upon demand for such reinstatement provided that the position is available and the employee is not disabled from performing the duties of such position. If the former position is not available, the employee shall be reinstated to another comparable position which is available and which the employee is capable of performing. A comparable position for the purposes of this section shall mean a position which is comparable as to wages, working conditions and, to the extent reasonably practicable, duties to the position held at the time of injury. A written statement from a duly licensed physician that the physician approves the injured employee's return to his or her regular employment shall be prima facie evidence that the worker is able to perform such duties. In the event that neither the former position nor a comparable position is available, the employee shall have a right to preferential recall to any job which the injured employee is capable of performing which becomes open after the injured employee notifies the employer that he or she desired reinstatement. Said right of preferential recall shall be in effect for one year from the day the injured employee notifies the employer that he or she desires reinstatement: Provided, That the employee provides to the employer a current mailing address during this one year period.

(c) Any civil action brought under this section shall be subject to the seniority provisions of a valid and applicable collective bargaining agreement, or arbitrator's decision thereunder, or to any court or administrative order applying specifically to the injured employee's employer, and shall further be subject to any applicable federal statute or regulation.

(d) Nothing in this section shall affect the eligibility of the injured employee to workers' compensation benefits under this chapter.
The first column gives the number of the bill and the second column gives the chapter assigned to it.

**Regular Session, 1990**

**HOUSE BILLS**

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
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<tbody>
<tr>
<td>2159</td>
<td>132</td>
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<tr>
<td>2219</td>
<td>74</td>
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<td>112</td>
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<td>129</td>
</tr>
<tr>
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<tr>
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<td>131</td>
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<td>58</td>
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<td>156</td>
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<td>15</td>
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<td>4664</td>
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<td>119</td>
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<tr>
<td>4670</td>
<td>21</td>
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<tr>
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<td>17</td>
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<tr>
<td>4679</td>
<td>59</td>
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<tr>
<td>4690</td>
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</tr>
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<tr>
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</tr>
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<td>84</td>
</tr>
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</tr>
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<td>188</td>
</tr>
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<td>4770</td>
<td>80</td>
</tr>
<tr>
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<td>56</td>
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<tr>
<td>4793</td>
<td>178</td>
</tr>
<tr>
<td>4794</td>
<td>179</td>
</tr>
<tr>
<td>4799</td>
<td>71</td>
</tr>
<tr>
<td>4800</td>
<td>72</td>
</tr>
<tr>
<td>4803</td>
<td>28</td>
</tr>
<tr>
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<td>94</td>
</tr>
<tr>
<td>4843</td>
<td>133</td>
</tr>
<tr>
<td>4846</td>
<td>77</td>
</tr>
</tbody>
</table>
### Disposition of Bills

#### Senate Bills

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>39</td>
<td>162</td>
<td>115</td>
</tr>
<tr>
<td>5</td>
<td>51</td>
<td>184</td>
<td>65</td>
</tr>
<tr>
<td>11</td>
<td>139</td>
<td>188</td>
<td>121</td>
</tr>
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<td>14</td>
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<td>195</td>
<td>73</td>
</tr>
<tr>
<td>15</td>
<td>118</td>
<td>243</td>
<td>120</td>
</tr>
<tr>
<td>18</td>
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<td>270</td>
<td>100</td>
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<td>22</td>
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<td>276</td>
<td>143</td>
</tr>
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<td>10</td>
<td>277</td>
<td>148</td>
</tr>
<tr>
<td>37</td>
<td>36</td>
<td>279</td>
<td>34</td>
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<tr>
<td>41</td>
<td>170</td>
<td>280</td>
<td>26</td>
</tr>
<tr>
<td>44</td>
<td>145</td>
<td>298</td>
<td>144</td>
</tr>
<tr>
<td>61</td>
<td>84</td>
<td>301</td>
<td>185</td>
</tr>
<tr>
<td>62</td>
<td>186</td>
<td>302</td>
<td>78</td>
</tr>
<tr>
<td>67</td>
<td>36</td>
<td>307</td>
<td>62</td>
</tr>
<tr>
<td>77</td>
<td>38</td>
<td>316</td>
<td>162</td>
</tr>
<tr>
<td>89</td>
<td>191</td>
<td>320</td>
<td>2</td>
</tr>
<tr>
<td>92</td>
<td>171</td>
<td>327</td>
<td>63</td>
</tr>
<tr>
<td>101</td>
<td>193</td>
<td>333</td>
<td>176</td>
</tr>
<tr>
<td>109</td>
<td>181</td>
<td>337</td>
<td>9</td>
</tr>
<tr>
<td>127</td>
<td>159</td>
<td>338</td>
<td>99</td>
</tr>
<tr>
<td>136</td>
<td>138</td>
<td>339</td>
<td>137</td>
</tr>
<tr>
<td>138</td>
<td>30</td>
<td>355</td>
<td>29</td>
</tr>
<tr>
<td>146</td>
<td>24</td>
<td>366</td>
<td>136</td>
</tr>
<tr>
<td>147</td>
<td>66</td>
<td>401</td>
<td>42</td>
</tr>
<tr>
<td>148</td>
<td>27</td>
<td>419</td>
<td>7</td>
</tr>
<tr>
<td>149</td>
<td>146</td>
<td>437</td>
<td>31</td>
</tr>
</tbody>
</table>

#### First Extraordinary Session, 1990

**House Bills**

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>101</td>
<td>2</td>
</tr>
<tr>
<td>102</td>
<td>1</td>
</tr>
</tbody>
</table>

#### Second Extraordinary Session, 1990

**House Bills**

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>201</td>
<td>9</td>
</tr>
<tr>
<td>202</td>
<td>8</td>
</tr>
<tr>
<td>204</td>
<td>11</td>
</tr>
<tr>
<td>206</td>
<td>6</td>
</tr>
<tr>
<td>212</td>
<td>2</td>
</tr>
<tr>
<td>213</td>
<td>12</td>
</tr>
</tbody>
</table>

**Senate Bills**

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>11</td>
<td>3</td>
</tr>
</tbody>
</table>
## INDEX

**SECOND REGULAR SESSION, 1990**

**FIRST AND SECOND EXTRAORDINARY SESSIONS, 1990**

### ACTIONS AND SUITS:

<table>
<thead>
<tr>
<th>Statute of Frauds</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§55-1-1. When writing required</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

### ADMINISTRATION:

#### Appropriations, Expenditures and Deductions

| §12-3-17. Liabilities incurred by state boards, commissions, officers or employees which cannot be paid out of current appropriations | 2 | 107 |

#### Central Nonprofit Coordinating Agency and Committee,

**Purchase of Commodities and Services from the Handicapped**

| §5A-3A-1. Purpose | 2 | 82 |
| §5A-3A-2. Central nonprofit agency | 2 | 82 |
| §5A-3A-3. Committee for the purchase of commodities and services from the handicapped | 2 | 83 |
| §5A-3A-4. Responsibilities of the committee for the purchase of commodities and services from the handicapped | 2 | 84 |
| §5A-3A-5. Rules | 2 | 85 |
| §5A-3A-6. Exceptions | 2 | 85 |

#### Civil Service System

| §29-6-7. Director of personnel; appointment; qualifications; powers and duties | 2 | 110 |
| §29-6-23. Special fund; appropriations; cost of administering article; acceptance of grants or contribution; disbursements | 2 | 111 |

#### Department of Administration

| §5A-1-1. Definitions | 2 | 17 |
| §5A-1-2. Department of administration and office of secretary; secretary; division of finance and administration abolished; divisions; directors | 2 | 18 |
| §5A-1-3. Powers and duties of secretary, division heads and employees | 2 | 19 |
| §5A-1-4. Council of finance and administration | 2 | 20 |
| §5A-1-5. Reports by secretary | 2 | 21 |
| §5A-1-6. Oath and bond of secretary; bond required for director of the purchasing division; bonds for other directors and employees; cost of bonds | 2 | 21 |
| §5A-1-7. Delegation of powers and duties by secretary | 2 | 22 |
| §5A-1-8. Right of appeal from interference with functioning of agency | 2 | 22 |

#### Employee Suggestion Award Board

| §5A-1A-1. Employee suggestion award program continued | 2 | 23 |
| §5A-1A-2. Board created; term of members | 2 | 23 |
| §5A-1A-3. Duties of board; excluded employees | 2 | 23 |
| §5A-1A-4. Awards | 2 | 24 |
| §5A-1A-5. State ownership of suggestions | 2 | 25 |

#### Finance Division

| §5A-2-1. Finance division created; director; sections; powers and duties | 2 | 26 |
| §5A-2-2. General powers and duties of secretary as director of budget | 2 | 26 |
| §5A-2-3. Requests for appropriations; copies to legislative auditor | 2 | 27 |
| §5A-2-4. Contents of requests | 2 | 28 |
| §5A-2-5. Form of requests | 2 | 29 |
**Governor's Mansion Advisory Committee**

**General Services Division**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5A-2-6</td>
<td>Information concerning state finances</td>
<td>2</td>
<td>29</td>
</tr>
<tr>
<td>§5A-2-7</td>
<td>Appropriations for judiciary</td>
<td>2</td>
<td>29</td>
</tr>
<tr>
<td>§5A-2-8</td>
<td>Examination of requests for appropriations</td>
<td>2</td>
<td>29</td>
</tr>
<tr>
<td>§5A-2-9</td>
<td>Appropriation requests by other than spending units</td>
<td>2</td>
<td>30</td>
</tr>
<tr>
<td>§5A-2-10</td>
<td>Powers of secretary in administration of expenditures</td>
<td>2</td>
<td>30</td>
</tr>
<tr>
<td>§5A-2-11</td>
<td>Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance</td>
<td>2</td>
<td>30</td>
</tr>
<tr>
<td>§5A-2-12</td>
<td>Submission of expenditure schedules; contents: submission of information on unpaid obligations; copies to legislative auditor</td>
<td>2</td>
<td>31</td>
</tr>
<tr>
<td>§5A-2-13</td>
<td>Examination and approval of expenditure schedules; amendments; copies to legislative auditor</td>
<td>2</td>
<td>33</td>
</tr>
<tr>
<td>§5A-2-14</td>
<td>Reserves for emergencies</td>
<td>2</td>
<td>33</td>
</tr>
<tr>
<td>§5A-2-15</td>
<td>Requests for quarterly allotments; approval or reduction by governor</td>
<td>2</td>
<td>34</td>
</tr>
<tr>
<td>§5A-2-16</td>
<td>Limitation on expenditures</td>
<td>2</td>
<td>34</td>
</tr>
<tr>
<td>§5A-2-17</td>
<td>Transfers between items of appropriation of executive, legislative and judicial branches</td>
<td>2</td>
<td>34</td>
</tr>
<tr>
<td>§5A-2-18</td>
<td>Expenditure of excess in collections; notices to auditor and treasurer</td>
<td>2</td>
<td>35</td>
</tr>
<tr>
<td>§5A-2-19</td>
<td>Reports by spending units; copies to legislative auditor</td>
<td>2</td>
<td>36</td>
</tr>
<tr>
<td>§5A-2-20</td>
<td>Reduction of appropriations—Powers of governor</td>
<td>2</td>
<td>36</td>
</tr>
<tr>
<td>§5A-2-21</td>
<td>Reduction of appropriations—Pro rata reduction of appropriations from general revenue</td>
<td>2</td>
<td>36</td>
</tr>
<tr>
<td>§5A-2-22</td>
<td>Reduction of appropriations—Pro rata reduction of appropriations from other funds</td>
<td>2</td>
<td>36</td>
</tr>
<tr>
<td>§5A-2-23</td>
<td>Approval of secretary of requests for changes and receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished to secretary and legislative auditor; and consolidated report of federal funds</td>
<td>2</td>
<td>39</td>
</tr>
<tr>
<td>§5A-2-24</td>
<td>Management accounting</td>
<td>2</td>
<td>39</td>
</tr>
<tr>
<td>§5A-2-25</td>
<td>System of accounting to be certified to legislative auditor</td>
<td>2</td>
<td>40</td>
</tr>
<tr>
<td>§5A-2-26</td>
<td>Expenditure of appropriations—Generally</td>
<td>2</td>
<td>40</td>
</tr>
<tr>
<td>§5A-2-27</td>
<td>Expenditure of appropriations—Other than for purchases of commodities</td>
<td>2</td>
<td>40</td>
</tr>
<tr>
<td>§5A-2-28</td>
<td>Expenditure of appropriations—Purchases of commodities</td>
<td>2</td>
<td>41</td>
</tr>
<tr>
<td>§5A-2-29</td>
<td>Expenditure of appropriations—Payment of personal services</td>
<td>2</td>
<td>41</td>
</tr>
<tr>
<td>§5A-2-30</td>
<td>Expenditure of appropriations—Legislative and judicial expenditures</td>
<td>2</td>
<td>42</td>
</tr>
<tr>
<td>§5A-2-31</td>
<td>Appropriations for officers, commissions, boards or institutions without office at capitol</td>
<td>2</td>
<td>42</td>
</tr>
<tr>
<td>§5A-2-32</td>
<td>Submission of requests, amendments, reports, etc., to legislative auditor; penalty for noncompliance</td>
<td>2</td>
<td>42</td>
</tr>
</tbody>
</table>

**General Services Division**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5A-4-1</td>
<td>General services division; director</td>
<td>2</td>
<td>86</td>
</tr>
<tr>
<td>§5A-4-2</td>
<td>Care, control and custody of capitol buildings and grounds</td>
<td>2</td>
<td>86</td>
</tr>
<tr>
<td>§5A-4-3</td>
<td>Security officers; appointment; oath; carrying weapons; powers and duties generally, etc.</td>
<td>2</td>
<td>87</td>
</tr>
<tr>
<td>§5A-4-4</td>
<td>Unlawful to kill or molest animals, birds or fowls upon grounds of capitol; powers and duties of security officers; penalties</td>
<td>2</td>
<td>88</td>
</tr>
<tr>
<td>§5A-4-5</td>
<td>Regulation of parking on state-owned property in Charleston; penalties; jurisdiction</td>
<td>2</td>
<td>89</td>
</tr>
</tbody>
</table>

**Governor's Mansion Advisory Committee**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5A-5-1</td>
<td>Committee continued; appointment, terms, etc., of members; meetings and responsibilities; annual report</td>
<td>2</td>
<td>91</td>
</tr>
<tr>
<td>ADMINISTRATION—(continued):</td>
<td>Ch.</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-----</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Governor's Mansion Advisory Committee—(continued):</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>§5A-5-2. Office of governor's mansion director created; duties and responsibilities</td>
<td>2</td>
<td>92</td>
<td></td>
</tr>
<tr>
<td>§5A-5-3. Official use of state rooms in governor's mansion; vacating private rooms of mansion</td>
<td>2</td>
<td>93</td>
<td></td>
</tr>
<tr>
<td>Information Services and Communications Division</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>§5A-7-1. Definitions</td>
<td>2</td>
<td>94</td>
<td></td>
</tr>
<tr>
<td>§5A-7-2. Division created; purpose; use of facilities, rules and regulations</td>
<td>2</td>
<td>94</td>
<td></td>
</tr>
<tr>
<td>§5A-7-3. Director; appointment and qualifications</td>
<td>2</td>
<td>95</td>
<td></td>
</tr>
<tr>
<td>§5A-7-4. Powers and duties of division generally; review of findings by governor; authority of governor to order transfer of equipment and personnel; professional staff</td>
<td>2</td>
<td>95</td>
<td></td>
</tr>
<tr>
<td>§5A-7-5. Control over central mailing office</td>
<td>2</td>
<td>96</td>
<td></td>
</tr>
<tr>
<td>§5A-7-6. Central mailing office employees</td>
<td>2</td>
<td>96</td>
<td></td>
</tr>
<tr>
<td>§5A-7-7. Central mailing office responsibilities</td>
<td>2</td>
<td>96</td>
<td></td>
</tr>
<tr>
<td>§5A-7-8. Use of the central mailing office</td>
<td>2</td>
<td>96</td>
<td></td>
</tr>
<tr>
<td>§5A-7-9. Preparation of mail for special rates</td>
<td>2</td>
<td>97</td>
<td></td>
</tr>
<tr>
<td>§5A-7-10. Special fund created; payments into fund; charges for services; disbursements from fund</td>
<td>2</td>
<td>97</td>
<td></td>
</tr>
<tr>
<td>§5A-7-11. Confidential records</td>
<td>2</td>
<td>98</td>
<td></td>
</tr>
<tr>
<td>Interest on Public Contracts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>§14-3-1. Payment of interest by the State on contracts when final payment is delayed</td>
<td>2</td>
<td>107</td>
<td></td>
</tr>
<tr>
<td>Public Records Management and Preservation Act</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>§5A-8-1. Short title</td>
<td>2</td>
<td>98</td>
<td></td>
</tr>
<tr>
<td>§5A-8-2. Declaration of policy</td>
<td>2</td>
<td>98</td>
<td></td>
</tr>
<tr>
<td>§5A-8-3. Definitions</td>
<td>2</td>
<td>99</td>
<td></td>
</tr>
<tr>
<td>§5A-8-4. Categories of records to be preserved</td>
<td>2</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>§5A-8-5. State records administrator</td>
<td>2</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>§5A-8-6. Records management and preservation advisory committee</td>
<td>2</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>§5A-8-7. Duties of administrator</td>
<td>2</td>
<td>101</td>
<td></td>
</tr>
<tr>
<td>§5A-8-8. Rules and regulations</td>
<td>2</td>
<td>102</td>
<td></td>
</tr>
<tr>
<td>§5A-8-9. Duties of agency heads</td>
<td>2</td>
<td>102</td>
<td></td>
</tr>
<tr>
<td>§5A-8-10. Essential state records—Preservation duplicates</td>
<td>2</td>
<td>103</td>
<td></td>
</tr>
<tr>
<td>§5A-8-11. Essential state records—Safekeeping</td>
<td>2</td>
<td>103</td>
<td></td>
</tr>
<tr>
<td>§5A-8-12. Essential state records—Maintenance, inspection and use</td>
<td>2</td>
<td>104</td>
<td></td>
</tr>
<tr>
<td>§5A-8-13. Essential state records—Confidential records</td>
<td>2</td>
<td>105</td>
<td></td>
</tr>
<tr>
<td>§5A-8-14. Essential state records—Review of program</td>
<td>2</td>
<td>105</td>
<td></td>
</tr>
<tr>
<td>§5A-8-15. Records management and preservation of local records</td>
<td>2</td>
<td>105</td>
<td></td>
</tr>
<tr>
<td>§5A-8-16. Assistance to legislative and judicial branches</td>
<td>2</td>
<td>106</td>
<td></td>
</tr>
<tr>
<td>§5A-8-17. Disposal of records</td>
<td>2</td>
<td>106</td>
<td></td>
</tr>
<tr>
<td>§5A-8-18. Destruction of nonrecord materials</td>
<td>2</td>
<td>106</td>
<td></td>
</tr>
<tr>
<td>§5A-8-19. Annual report</td>
<td>2</td>
<td>106</td>
<td></td>
</tr>
<tr>
<td>Purchasing Division</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>§5A-3-1. Division created; purpose; director; applicability of article</td>
<td>2</td>
<td>44</td>
<td></td>
</tr>
<tr>
<td>§5A-3-1a. Prescription drug products</td>
<td>2</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>§5A-3-2. Books and records of director</td>
<td>2</td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>§5A-3-3. Powers and duties of director of purchasing</td>
<td>2</td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>§5A-3-4. Rules and regulations of director</td>
<td>2</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>§5A-3-5. Purchasing section standard specifications—Promulgation and adoption by director applicable to all purchases</td>
<td>2</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>§5A-3-6. Purchasing section standard specifications—Advisers from spending units</td>
<td>2</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>§5A-3-7. Director to advise with heads of state and other institutions producing commodities, services and printing</td>
<td>2</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>§5A-3-8.</td>
<td>Facilities of division available to local governmental bodies.</td>
<td>2</td>
<td>51</td>
</tr>
<tr>
<td>§5A-3-9.</td>
<td>Examination and testing of purchases; report required.</td>
<td>2</td>
<td>51</td>
</tr>
<tr>
<td>§5A-3-10.</td>
<td>Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.</td>
<td>2</td>
<td>51</td>
</tr>
<tr>
<td>§5A-3-11.</td>
<td>Purchasing in open market on competitive bids; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.</td>
<td>2</td>
<td>52</td>
</tr>
<tr>
<td>§5A-3-12.</td>
<td>Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false affidavits, etc.; penalties.</td>
<td>2</td>
<td>54</td>
</tr>
<tr>
<td>§5A-3-13.</td>
<td>Contracts to be approved as to form; filing.</td>
<td>2</td>
<td>56</td>
</tr>
<tr>
<td>§5A-3-14.</td>
<td>Copies of purchase orders sent to finance division; certificates required before contracts awarded.</td>
<td>2, 32</td>
<td>56, 370</td>
</tr>
<tr>
<td>§5A-3-15.</td>
<td>Emergency purchases in open market.</td>
<td>2</td>
<td>56</td>
</tr>
<tr>
<td>§5A-3-16.</td>
<td>Special fund; purposes; how composed.</td>
<td>2</td>
<td>57</td>
</tr>
<tr>
<td>§5A-3-17.</td>
<td>Purchases or contracts violating article void; personal liability.</td>
<td>2</td>
<td>57</td>
</tr>
<tr>
<td>§5A-3-18.</td>
<td>Substituting for commodity bearing particular trade name or brand.</td>
<td>2</td>
<td>58</td>
</tr>
<tr>
<td>§5A-3-19.</td>
<td>Purchases from federal government and other sources.</td>
<td>2</td>
<td>58</td>
</tr>
<tr>
<td>§5A-3-20.</td>
<td>Spending units to submit lists of expendable commodities.</td>
<td>2</td>
<td>58</td>
</tr>
<tr>
<td>§5A-3-21.</td>
<td>Contracts for public printing and paper for spending units; printing plants at institutions.</td>
<td>2</td>
<td>58</td>
</tr>
<tr>
<td>§5A-3-22.</td>
<td>Legislative printing.</td>
<td>2</td>
<td>59</td>
</tr>
<tr>
<td>§5A-3-23.</td>
<td>Publication of reports of supreme court of appeals.</td>
<td>2</td>
<td>59</td>
</tr>
<tr>
<td>§5A-3-24.</td>
<td>Publication of departmental reports; uniform standards; limiting number of publications; requiring division to perform printing and binding.</td>
<td>2</td>
<td>61</td>
</tr>
<tr>
<td>§5A-3-25.</td>
<td>Printing, binding and stationery to be paid from current expense appropriations.</td>
<td>2</td>
<td>62</td>
</tr>
<tr>
<td>§5A-3-26.</td>
<td>Custodian of reports and acts; delivery to state law librarian for distribution; sale.</td>
<td>2</td>
<td>62</td>
</tr>
<tr>
<td>§5A-3-27.</td>
<td>Director to establish central duplicating office; exemption of particular spending units; contracts for duplicating.</td>
<td>2</td>
<td>63</td>
</tr>
<tr>
<td>§5A-3-28.</td>
<td>Financial interest of secretary, etc.; receiving reward from interested party; penalty; application of bribery statute.</td>
<td>2</td>
<td>63</td>
</tr>
<tr>
<td>§5A-3-29.</td>
<td>Penalty for violation of article.</td>
<td>2</td>
<td>64</td>
</tr>
<tr>
<td>§5A-3-30.</td>
<td>Obtaining money and property under false pretenses or by fraud from state; penalties.</td>
<td>2</td>
<td>64</td>
</tr>
<tr>
<td>§5A-3-31.</td>
<td>Corrupt combinations, collusions or conspiracies prohibited; penalties.</td>
<td>2</td>
<td>65</td>
</tr>
<tr>
<td>§5A-3-32.</td>
<td>Power of director to suspend right to bid; notice of suspension.</td>
<td>2</td>
<td>65</td>
</tr>
<tr>
<td>§5A-3-33.</td>
<td>Review of suspension by secretary.</td>
<td>2</td>
<td>65</td>
</tr>
<tr>
<td>§5A-3-34.</td>
<td>Authority over inventories and property.</td>
<td>2</td>
<td>65</td>
</tr>
<tr>
<td>§5A-3-35.</td>
<td>Submission of annual inventories.</td>
<td>2</td>
<td>66</td>
</tr>
<tr>
<td>§5A-3-36.</td>
<td>Inventory of removable property; maintenance and repair of office furniture, machinery and equipment.</td>
<td>2</td>
<td>66</td>
</tr>
<tr>
<td>§5A-3-37.</td>
<td>Preference for resident vendors; preference for vendors employing state residents; exceptions.</td>
<td>2</td>
<td>66</td>
</tr>
<tr>
<td>§5A-3-37a.</td>
<td>Preference for resident vendors; exceptions; reciprocal preference.</td>
<td>2</td>
<td>69</td>
</tr>
<tr>
<td>§5A-3-38.</td>
<td>Leases for space to be made in accordance with article; exception.</td>
<td>2</td>
<td>70</td>
</tr>
</tbody>
</table>
## Index

**ADMINISTRATION**—(continued):

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5A-3-39</td>
<td>Leasing of space by secretary; delegation of authority</td>
<td>2 70</td>
</tr>
<tr>
<td>§5A-3-40</td>
<td>Selection of grounds, etc.; acquisition by contract or lease; long-term leases; requiring approval of secretary for permanent changes</td>
<td>2 71</td>
</tr>
<tr>
<td>§5A-3-41</td>
<td>Leases and other instruments for space signed by secretary or director; approval as to form; filing</td>
<td>2 72</td>
</tr>
<tr>
<td>§5A-3-42</td>
<td>Leasing for space rules and regulations</td>
<td>2 72</td>
</tr>
<tr>
<td>§5A-3-43</td>
<td>State agency for surplus property created</td>
<td>2 72</td>
</tr>
<tr>
<td>§5A-3-44</td>
<td>Authority and duties of state agency for surplus property</td>
<td>2 73</td>
</tr>
<tr>
<td>§5A-3-45</td>
<td>Disposition of surplus state property; semiannual report; application of proceeds from sale</td>
<td>2 74</td>
</tr>
<tr>
<td>§5A-3-46</td>
<td>Warehousing, transfer, etc., charges</td>
<td>2 77</td>
</tr>
<tr>
<td>§5A-3-47</td>
<td>Department of agriculture and other agencies exempted</td>
<td>2 77</td>
</tr>
<tr>
<td>§5A-3-48</td>
<td>Travel rules and regulations; exceptions</td>
<td>2 78</td>
</tr>
<tr>
<td>§5A-3-49</td>
<td>Central motor pool for state-owned vehicles and aircraft</td>
<td>2 78</td>
</tr>
<tr>
<td>§5A-3-50</td>
<td>Acquiring and disposing of vehicles and aircraft</td>
<td>2 79</td>
</tr>
<tr>
<td>§5A-3-51</td>
<td>Maintenance and service to vehicles and aircraft</td>
<td>2 79</td>
</tr>
<tr>
<td>§5A-3-52</td>
<td>Special fund for travel management created</td>
<td>2 79</td>
</tr>
<tr>
<td>§5A-3-53</td>
<td>Enforcement of travel management regulations</td>
<td>2 79</td>
</tr>
<tr>
<td>§5A-3-54</td>
<td>Payment of legitimate uncontested invoices; interest on late payments</td>
<td>2 80</td>
</tr>
</tbody>
</table>

### State Building Commission

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5-6-3</td>
<td>Definitions</td>
<td>2 11</td>
</tr>
<tr>
<td>§5-6-4</td>
<td>Powers of commission</td>
<td>2 13</td>
</tr>
<tr>
<td>§5-6-7</td>
<td>Contracts with commission to be secured by bond; competitive bids required for certain contracts</td>
<td>2 16</td>
</tr>
</tbody>
</table>

### Voluntary Gilding the Dome Check-Off Program

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5A-9-3</td>
<td>Contributions credited to special fund</td>
<td>2 106</td>
</tr>
</tbody>
</table>

### AGRICULTURE:

#### Cooperative Extension Workers

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§19-8-1</td>
<td>County extension service committee; composition; organization; duties and responsibilities; employment and compensation of extension workers</td>
<td>4 114</td>
</tr>
</tbody>
</table>

#### Insect Pests, Plant Diseases and Noxious Weeds

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§19-12-2</td>
<td>Definitions</td>
<td>5 117</td>
</tr>
<tr>
<td>§19-12-16</td>
<td>Penalty for violation of article, rules and regulations; duties of prosecuting attorney</td>
<td>5 119</td>
</tr>
</tbody>
</table>

#### Public Markets

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§19-2A-8</td>
<td>Applicant for permit to furnish surety bond for benefit of consignors; form of surety bond</td>
<td>3 112</td>
</tr>
</tbody>
</table>

#### West Virginia Agricultural Liming Materials Law

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§19-15A-1</td>
<td>Definitions of words and terms</td>
<td>6 120</td>
</tr>
<tr>
<td>§19-15A-2</td>
<td>Registration of brands; registration fees</td>
<td>6 122</td>
</tr>
<tr>
<td>§19-15A-3</td>
<td>Required labeling; toxic materials prohibited</td>
<td>6 123</td>
</tr>
<tr>
<td>§19-15A-4</td>
<td>Inspection fee; report of tonnage; annual report</td>
<td>6 124</td>
</tr>
<tr>
<td>§19-15A-5</td>
<td>Inspection; sampling; analysis</td>
<td>6 125</td>
</tr>
<tr>
<td>§19-16A-6</td>
<td>Embargo: suspension or cancellation of registration; seizure of materials</td>
<td>6 126</td>
</tr>
<tr>
<td>§19-15A-7</td>
<td>Deficiency assessment, tolerances and payment</td>
<td>6 127</td>
</tr>
<tr>
<td>§19-15A-8</td>
<td>Regulations</td>
<td>6 128</td>
</tr>
<tr>
<td>§19-15A-9</td>
<td>Lime fund</td>
<td>6 128</td>
</tr>
<tr>
<td>§19-15A-10</td>
<td>Penalties</td>
<td>6 128</td>
</tr>
</tbody>
</table>

#### West Virginia Pesticide Control Act

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§19-16A-1</td>
<td>Short title</td>
<td>7 130</td>
</tr>
<tr>
<td>§19-16A-2</td>
<td>Declaration of purpose; legislative finding</td>
<td>7 130</td>
</tr>
<tr>
<td>§19-16A-3</td>
<td>Definitions</td>
<td>7 131</td>
</tr>
<tr>
<td>§19-16A-4</td>
<td>Powers and duties of the commissioner</td>
<td>7 139</td>
</tr>
</tbody>
</table>
AGRICULTURE—(continued):
West Virginia Pesticide Control Act—(continued):
§19-16A-6. Registration of pesticides; fees; confidentiality of trade secrets .................................................. 7 141
§19-16A-6. Refusal or cancellation of registration................................................................. 7 143
§19-16A-7. Annual pesticide business license............................................................ 7 144
§19-16A-8. Financial security requirement for licensed pesticide business ................................................................. 7 146
§19-16A-9. Records of pesticide businesses ............................................................................ 7 147
§19-16A-10. Restricted use pesticides .................................................................................. 7 147
§19-16A-11. Application of this article to government entities; liability ................................................................. 7 147
§19-16A-12. Private and commercial applicator's license and certificate; registered technician certificate .................................................................................. 7 148
§19-16A-13. Renewals ........................................................................................................... 7 149
§19-16A-14. Exemptions ....................................................................................................... 7 150
§19-16A-15. Reexamination or special examinations ................................................................. 7 151
§19-16A-16. Employee training program ............................................................................. 7 151
§19-16A-17. Reciprocal agreement ...................................................................................... 7 151
§19-16A-18. Denial, suspension or revocation of license, permit or certification; civil penalty ........................................................................................................... 7 152
§19-16A-19. Pesticide accidents; incidents or loss .................................................................. 7 152
§19-16A-20. Legal recourse of aggrieved persons ................................................................ 7 153
§19-16A-21. Violations ........................................................................................................ 7 153
§19-16A-22. Criminal penalties; civil penalties; negotiated agreement ................................................................. 7 157
§19-16A-23. Creation of pesticide control fund in state treasury; disposition of certain fees to general revenue fund ........................................................................... 7 158
§19-16A-24. Issuance of subpoenas ...................................................................................... 7 159
§19-16A-25. Right of commissioner to enter and inspect; enforcement of article ........................................................................... 7 159
§19-16A-26. Issuance of stop-sale; use or renewal orders; judicial review ........................................................................... 7 160
§19-16A-27. Issuing warnings ..................................................................................... 7 161

AIR POLLUTION CONTROL:
Air Pollution Control
§16-20-5. Air pollution control commission—Powers and duties; legal services; rules; public hearings ........................................................................... 8 162
§16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys ........................................................................... 8 166
§16-20-9. Applications for injunctive relief ........................................................................... 8 167

ALCOHOLIC LIQUOR:
Licenses to Private Clubs
§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner or retail licensee; exceptions ........................................................................... 9 193
Sales By Retail Liquor Licensees
§60-3A-1. Short title ........................................................................................................... 9 171
§60-3A-2. Legislative findings and declarations; legislative purpose ........................................................................... 9 171
§60-3A-3. Sale of liquor by retail licensees permitted; cessation of retail sale of liquor by state ........................................................................... 9 172
§60-3A-4. Definitions ........................................................................................................ 9 172
§60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions ........................................................................... 9 173
§60-3A-6. General powers and duties of board and commissioner ........................................................................... 9 175
§60-3A-7. Market zones; Class A and Class B retail licenses ........................................................................... 9 176
§60-3A-8. Retail license application requirements; retail licensee qualifications ........................................................................... 9 177
§60-3A-9. Investigation of applicants for retail license; notification to applicants approving or denying application; general provisions relating to licensing ........................................................................... 9 178
### INDEX

#### ALCOHOLIC LIQUOR—(continued):

<table>
<thead>
<tr>
<th>Sales By Retail Liquor Licensees—(continued):</th>
</tr>
</thead>
<tbody>
<tr>
<td>§60-3A-10. Bidding procedure........................................ 9 179</td>
</tr>
<tr>
<td>§60-3A-10a. Preference for resident bidders.......................... 9 181</td>
</tr>
<tr>
<td>§60-3A-11. Bonding requirements...................................... 9 181</td>
</tr>
<tr>
<td>§60-3A-12. Annual retail license fee; expiration and renewal of retail licenses................................. 9 182</td>
</tr>
<tr>
<td>§60-3A-13. Annual reports.............................................. 9 183</td>
</tr>
<tr>
<td>§60-3A-14. Sale, assignment or transfer of retail license........ 9 183</td>
</tr>
<tr>
<td>§60-3A-15. Surrender of retail license................................. 9 183</td>
</tr>
<tr>
<td>§60-3A-16. Restriction on location of retail outlets................ 9 184</td>
</tr>
<tr>
<td>§60-3A-17. Wholesale prices set by commissioner; continuation of price increases on liquor; retail licensees to purchase liquor from state; transportation and storage; method of payment................................. 9 184</td>
</tr>
<tr>
<td>§60-3A-18. Days and hours retail licensees may sell liquor........ 9 185</td>
</tr>
<tr>
<td>§60-3A-19. Limitation on amount to be sold.......................... 9 185</td>
</tr>
<tr>
<td>§60-3A-20. Nonapplication of article to retail sales of nonintoxicating beer............................................ 9 185</td>
</tr>
<tr>
<td>§60-3A-21. Tax on purchases of liquor.................................. 9 186</td>
</tr>
<tr>
<td>§60-3A-22. Requirement for posting informational sign................ 9 186</td>
</tr>
<tr>
<td>§60-3A-23. Records required of retail licensees; inspection of records...................................................... 9 186</td>
</tr>
<tr>
<td>§60-3A-24. Unlawful acts by persons................................... 9 187</td>
</tr>
<tr>
<td>§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties..................................................... 9 187</td>
</tr>
<tr>
<td>§60-3A-26. Civil penalties............................................... 9 189</td>
</tr>
<tr>
<td>§60-3A-27. Suspension or revocation of retail license................ 9 190</td>
</tr>
<tr>
<td>§60-3A-28. Notice of and hearing on revocation......................... 9 190</td>
</tr>
<tr>
<td>§60-3A-29. Disposition of inventory upon revocation or surrender of retail license........................................ 9 191</td>
</tr>
<tr>
<td>§60-3A-30. Employees...................................................... 9 192</td>
</tr>
<tr>
<td>§60-3A-31. Rules of construction; severability....................... 9 192</td>
</tr>
</tbody>
</table>

#### Taxation

| §11-15-9a. Exemptions; exceptions for sales of liquors and wines to private clubs........................................ 9 170 |

#### APPROPRIATIONS:

**Budget Bill**

| Index to, by accounts .................................................. 10 198 |
| Making appropriations of public money out of the Treasury for fiscal year 1990.................................................. 10 194 |

**Supplemental**

| Commission on Aging..................................................... 14 279 |
| Division of Highways.................................................... 18 283 |
| Division of Motor Vehicles............................................. 19,3 285,1595 |
| Division of Personnel, Civil Service System and Civil Service Commission....................................................... 17 282 |
| Drunk Driving Prevention Fund, Division of Public Safety........ 22 294 |
| Hospital Services Revenue Account, Division of Health............... 23 295 |
| Information System Services Division Fund............................ 21 293 |
| Medical Services Fund.................................................. 11 275 |
| Nonintoxicating Beer Commissioner....................................... 15 280 |
| State Department of Education, State Aid to Schools.................. 1 1551 |
| Supreme Court-General Judicial........................................ 12 276 |
| Tax Division.............................................................. 13 278 |
| Various Accounts......................................................... 20,1,4 287,1589, 1595 |

| Racing Commission....................................................... 16 281 |
| Consolidated Medical Services Fund..................................... 2 1594 |

#### ARCHITECT—ENGINEER SERVICES:

| Procurement of Architect-Engineer Services §5G-1-1. Declaration of legislative policy........................................ 24 297 |
ARCHITECT—ENGINEER SERVICES—(continued):
Procurement of Architect-Engineer Services—(continued):
§5G-1-2. Definitions ................................................................. 24 297
§5G-1-3. Contracts for architectural and engineering services;
selection process where total project costs are estimated to cost two hundred fifty thousand dollars
or more .................................................................................. 24 298
§5G-1-4. Contracts for architectural and engineering services;
selection process where total project costs are estimated to cost less than two hundred fifty
thousand dollars .................................................................... 24 299

ARCHIVES AND HISTORY:
Division of Culture and History
§29-1-5. Archives and history section; director .............................. 25 301
§29-1-6b. Protection of human skeletal remains; grave artifacts and
grave markers; permits for excavation and removal; penalties ....................... 25 304
§29-1-7. Protection of historic and prehistoric sites; penalties ........ 25 312

BANKS AND BANKING:
Acquisition of Bank Shares
§31A-8A-1. Legislative findings and purpose .................................. 28 317
§31A-8A-7. Acquisition of state bank or holding company by
foreign bank; reciprocity; authority of the commissioner and of the board .......... 28 318
Banking Institutions and Services Generally
§31A-4-3. Minimum capital stock; one class of stock; par value;
capitalization of surplus ................................................................ 28 317
§31A-4-44. Employment information ............................................ 29 324
Board of Banking and Financial Institutions
§31A-3-1. Board created; appointment, qualifications, terms, oath,
etc., of members; quorum; meetings; when members disqualified from participation;
compensation; records; office space; personnel .................................. 27 313
Department of Finance and Administration
§5A-1-9. Reporting of state assets held to secretary and state
treasurer .................................................................................. 26 313

Funds Transfers
Part I. Subject Matter and Definitions.
§46-4A-101. Short title ................................................................. 30 326
§46-4A-102. Subject matter .......................................................... 30 326
§46-4A-103. Payment order—Definitions ...................................... 30 326
§46-4A-104. Funds transfer—Definitions ...................................... 30 327
§46-4A-105. Other definitions ...................................................... 30 328
§46-4A-106. Time payment order is received ................................. 30 330
§46-4A-107. Federal reserve regulations and operating circulars .... 30 331
§46-4A-108. Exclusion of consumer transactions governed by
federal law .............................................................................. 30 331
Part II. Issue and Acceptance of Payment Order.
§46-4A-201. Security procedure .................................................. 30 331
§46-4A-202. Authorized and verified payment orders ..................... 30 332
§46-4A-203. Unenforceability of certain verified payment orders .... 30 333
§46-4A-204. Refund of payment and duty of customer to report
with respect to unauthorized payment order .................................... 30 334
§46-4A-205. Erroneous payment orders ....................................... 30 334
§46-4A-206. Transmission of payment order through funds-
transfer or other communication system ....................................... 30 334
§46-4A-207. Misdescription of beneficiary .................................... 30 336
§46-4A-208. Misdescription of intermediary bank or
beneficiary's bank .................................................................... 30 338
§46-4A-209. Acceptance of payment order .................................... 30 339
§46-4A-210. Rejection of payment order ....................................... 30 341
### Index

**Banks and Banking**—(continued):

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§46-4A-211</td>
<td>Cancellation and amendment of payment order</td>
<td>30</td>
<td>342</td>
</tr>
<tr>
<td>§46-4A-212</td>
<td>Liability and duty of receiving bank regarding unaccepted payment order</td>
<td>30</td>
<td>344</td>
</tr>
</tbody>
</table>

**Part III. Execution of Sender's Payment Order by Receiving Bank.**

| §46-4A-301    | Execution and execution date                                                 | 30  | 344  |
| §46-4A-302    | Obligations of receiving bank in execution of payment order                  | 30  | 345  |
| §46-4A-303    | Erroneous execution of payment order                                          | 30  | 346  |
| §46-4A-304    | Duty of sender to report erroneously executed payment order                  | 30  | 347  |
| §46-4A-305    | Liability for late or improper execution of failure to execute payment order | 30  | 348  |

**Part IV. Payment.**

| §46-4A-401    | Payment date                                                                  | 30  | 349  |
| §46-4A-402    | Obligation of sender to pay receiving bank                                   | 30  | 349  |
| §46-4A-403    | Payment by sender to receiving bank                                           | 30  | 351  |
| §46-4A-404    | Obligation of beneficiary's bank to pay and give notice to beneficiary       | 30  | 352  |
| §46-4A-405    | Payment by beneficiary's bank to beneficiary                                 | 30  | 353  |
| §46-4A-406    | Payment by originator to beneficiary; discharge of underlying obligation     | 30  | 355  |

**Part V. Miscellaneous Provisions.**

| §46-4A-501    | Variation by agreement and effect of funds-transfer system rule              | 30  | 356  |
| §46-4A-502    | Creditor process served on receiving bank; setoff by beneficiary's bank      | 30  | 356  |
| §46-4A-503    | Injunction or restraining order with respect to funds transfer               | 30  | 358  |
| §46-4A-504    | Order in which items and payment orders may be charged to account; order of withdrawals from accounts | 30  | 358  |
| §46-4A-505    | Preclusion of objection to debit of customer's account                      | 30  | 358  |
| §46-4A-506    | Rate of interest                                                             | 30  | 358  |
| §46-4A-507    | Choice of law                                                                 | 30  | 359  |

**Lending and Credit Rate Board**

| §47A-1.2      | Board staff, offices, funding                                                | 28  | 323  |

**Beer:**

**Nonintoxicating Beer**

| §11-16.8      | Form of application for license; fee and bond; refusal of license            | 31  | 362  |
| §11-16.22     | Powers of the commissioner; rules, or orders                                  | 31  | 364  |
| §11-16.23     | Revocation or suspension of license; monetary penalty; hearing assessment of costs; establishment of enforcement fund | 31  | 366  |
| §11-16.24     | Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee assessment of costs | 31  | 367  |

**Bids:**

**Purchasing Division**

<p>| §5A-3.14      | Bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder, uniform bids; record of bids; and exception | 2,32 | 56,370 |</p>
<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>BLENNERHASSETT PARK:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Blennerhassett Historic Park Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§29-8-2. Blennerhassett historical state park commission</td>
<td>33</td>
<td>372</td>
</tr>
<tr>
<td>established; members; terms; meeting; quorum; compensation; expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BOARD OF INVESTMENTS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Virginia Board of Investments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§12-6-5a. Legislative findings and limitation on certain board actions</td>
<td>34</td>
<td>374</td>
</tr>
<tr>
<td>§12-6-18. West Virginia board of investments continued</td>
<td>35</td>
<td>376</td>
</tr>
<tr>
<td>BUDGET BILL:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See APPROPRIATIONS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CABLE TELEVISION:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Virginia Cable Television Systems Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§5-18-1. Short title</td>
<td>36</td>
<td>379</td>
</tr>
<tr>
<td>§5-18-2. Legislative findings</td>
<td>36</td>
<td>379</td>
</tr>
<tr>
<td>§5-18-3. Definitions</td>
<td>36</td>
<td>379</td>
</tr>
<tr>
<td>§5-18-4. Cable franchise required; franchising authority</td>
<td>36</td>
<td>382</td>
</tr>
<tr>
<td>§5-18-5. Existing cable franchises</td>
<td>36</td>
<td>383</td>
</tr>
<tr>
<td>§5-18-6. West Virginia cable television advisory board created; appointments and terms of members; meetings; vacancies; quorum</td>
<td>36</td>
<td>384</td>
</tr>
<tr>
<td>§5-18-7. Compensation and expenses of board members</td>
<td>36</td>
<td>387</td>
</tr>
<tr>
<td>§5-18-8. Duties of West Virginia cable television advisory board</td>
<td>36</td>
<td>388</td>
</tr>
<tr>
<td>§5-18-9. Application or proposal for cable franchise; fee; certain requirements</td>
<td>36</td>
<td>390</td>
</tr>
<tr>
<td>§5-18-10. Cable franchise application or proposal procedure; public hearing; notice</td>
<td>36</td>
<td>391</td>
</tr>
<tr>
<td>§5-18-11. Issuance of cable franchise authority; criteria; content</td>
<td>36</td>
<td>392</td>
</tr>
<tr>
<td>§5-18-12. Cable system installation, construction, operation, removal; general provisions</td>
<td>36</td>
<td>393</td>
</tr>
<tr>
<td>§5-18-13. Revocation, alteration, or suspension of cable franchise; penalties</td>
<td>36</td>
<td>395</td>
</tr>
<tr>
<td>§5-18-14. Renewal of cable franchise</td>
<td>36</td>
<td>396</td>
</tr>
<tr>
<td>§5-18-15. Transfer of cable franchise</td>
<td>36</td>
<td>397</td>
</tr>
<tr>
<td>§5-18-16. Rates; filing with board; approval</td>
<td>36</td>
<td>397</td>
</tr>
<tr>
<td>§5-18-17. Requirement for adequate service; terms and conditions of service</td>
<td>36</td>
<td>398</td>
</tr>
<tr>
<td>§5-18-18. Procedure for restoring interrupted service and improving substandard service</td>
<td>36</td>
<td>398</td>
</tr>
<tr>
<td>§5-18-19. Credit or refund for interrupted service</td>
<td>36</td>
<td>399</td>
</tr>
<tr>
<td>§5-18-20. Office operating requirements; office hours</td>
<td>36</td>
<td>399</td>
</tr>
<tr>
<td>§5-18-21. Notice to subscribers regarding quality of service</td>
<td>36</td>
<td>399</td>
</tr>
<tr>
<td>§5-18-22. Recording of subscriber complaints</td>
<td>36</td>
<td>400</td>
</tr>
<tr>
<td>§5-18-23. Franchise document clearinghouse</td>
<td>36</td>
<td>400</td>
</tr>
<tr>
<td>§5-18-24. Rights of individuals</td>
<td>36</td>
<td>401</td>
</tr>
<tr>
<td>§5-18-25. Complaints; violations; penalties</td>
<td>36</td>
<td>401</td>
</tr>
<tr>
<td>§5-18-26. Other duties of board; suit to enforce article</td>
<td>36</td>
<td>403</td>
</tr>
<tr>
<td>§5-18-27. Reports</td>
<td>36</td>
<td>403</td>
</tr>
<tr>
<td>§5-18-28. Annual fees; effect of application and filing fees on franchise fees</td>
<td>36</td>
<td>403</td>
</tr>
<tr>
<td>§5-18-29. Cable television industry not regulated as a utility</td>
<td>36</td>
<td>404</td>
</tr>
<tr>
<td>§5-18-30. Severability</td>
<td>36</td>
<td>404</td>
</tr>
<tr>
<td>CAPITAL COMPANY ACT:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§5E-1-4. Definitions</td>
<td>37</td>
<td>405</td>
</tr>
<tr>
<td>CAPITOL BUILDING COMMISSION:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§4-8-1. Creation; composition; qualifications</td>
<td>38</td>
<td>407</td>
</tr>
<tr>
<td>§4-8-4. Powers and duties generally</td>
<td>38</td>
<td>408</td>
</tr>
</tbody>
</table>
## CHARITABLE FUNDS:

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§29-19-3</td>
<td>Commission on charitable organizations; powers and duties</td>
<td>1601</td>
</tr>
<tr>
<td>§29-19-6</td>
<td>Certain persons and organizations exempt from registration</td>
<td>1601</td>
</tr>
<tr>
<td>§29-19-7</td>
<td>Filing of solicitation contracts</td>
<td>1603</td>
</tr>
<tr>
<td>§29-19-8</td>
<td>Limitations on activities of charitable organizations</td>
<td>1604</td>
</tr>
<tr>
<td>§29-19-9</td>
<td>Registration of professional fund-raising counsel and professional solicitor; bonds; records; books</td>
<td>1605</td>
</tr>
<tr>
<td>§29-19-13</td>
<td>Prohibited acts</td>
<td>1607</td>
</tr>
<tr>
<td>§29-19-15</td>
<td>Enforcement and penalties</td>
<td>1608</td>
</tr>
</tbody>
</table>

## CHILD ADVOCATE:

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§48A-2-1</td>
<td>Reestablishment</td>
<td>408</td>
</tr>
</tbody>
</table>

## CHILD SUPPORT:

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§48A-2-2</td>
<td>Legislative purpose and intent; responsibility of the child advocate office</td>
<td>437</td>
</tr>
<tr>
<td>§48A-2-7</td>
<td>Powers and duties of the director; advisory council</td>
<td>438</td>
</tr>
<tr>
<td>§48A-3-1</td>
<td>Purposes; how article to be construed</td>
<td>440</td>
</tr>
<tr>
<td>§48A-3-2</td>
<td>Placement of children's advocates throughout the state; supervision; office procedures</td>
<td>441</td>
</tr>
<tr>
<td>§48A-3-3</td>
<td>Duties of the children's advocate</td>
<td>442</td>
</tr>
<tr>
<td>§48A-3-6</td>
<td>Investigations of support orders; notice and hearing upon modifications; petition for change</td>
<td>445,1613</td>
</tr>
<tr>
<td>§48A-3-8</td>
<td>Compensation; expenses</td>
<td>446</td>
</tr>
</tbody>
</table>

## Divorce, Annulment and Separate Maintenance

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§48-2-1</td>
<td>Definitions</td>
<td>421</td>
</tr>
<tr>
<td>§48-2-15</td>
<td>Relief upon ordering divorce or annulment or granting degree of separate maintenance</td>
<td>425</td>
</tr>
<tr>
<td>§48-2-15a</td>
<td>Withholding from income prior to November 1, 1990</td>
<td>431</td>
</tr>
<tr>
<td>§48-2-15b</td>
<td>Withholding from income on and after November 1, 1990</td>
<td>432</td>
</tr>
<tr>
<td>§48-2-27</td>
<td>Sealing by clerk of evidence and pleadings</td>
<td>434</td>
</tr>
<tr>
<td>§48-2-33</td>
<td>Disclosure of assets required</td>
<td>434</td>
</tr>
<tr>
<td>§48-2-15b</td>
<td>Withholding from income on and after November 1, 1990</td>
<td>1611</td>
</tr>
</tbody>
</table>

## Establishment of Paternity

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§48A-6-5</td>
<td>Representation of parties</td>
<td>473</td>
</tr>
<tr>
<td>§48A-6-6</td>
<td>Establishing paternity by acknowledgement of natural father</td>
<td>474</td>
</tr>
</tbody>
</table>

## Evidence and Witnesses

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§57-5-4</td>
<td>Production of writings by person other than party</td>
<td>475</td>
</tr>
</tbody>
</table>

## Proceedings Before a Master

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§48A-4-1</td>
<td>Appointment of family law masters; term of office; vacancy; qualifications; removal; compensation and expenses; budget; location of offices; matters to be heard by master; fees for hearings; notice of master's hearing; content of notice; determination of issues by consent; hearing</td>
<td>447</td>
</tr>
<tr>
<td>§48A-4-2</td>
<td>Hearing procedures</td>
<td>454</td>
</tr>
<tr>
<td>§48A-4-2a</td>
<td>Acts or failures to act in the physical presence of family law masters</td>
<td>456</td>
</tr>
<tr>
<td>§48A-4-3</td>
<td>Default orders; temporary orders</td>
<td>457</td>
</tr>
<tr>
<td>§48A-4-4</td>
<td>Recommended orders</td>
<td>458</td>
</tr>
</tbody>
</table>
## CHILD SUPPORT—(continued):

### Proceedings Before a Master—(continued):

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§48A-4-4a.</td>
<td>Form of notice of recommended order</td>
<td>40</td>
<td>459</td>
</tr>
<tr>
<td>§48A-4-5.</td>
<td>Orders to be entered by circuit court exclusively</td>
<td>40</td>
<td>459</td>
</tr>
<tr>
<td>§48A-4-6.</td>
<td>Circuit court review of master's action or recommended order</td>
<td>40</td>
<td>460</td>
</tr>
<tr>
<td>§48A-4-7.</td>
<td>Procedure for review by circuit court</td>
<td>40</td>
<td>460</td>
</tr>
<tr>
<td>§48A-4-8.</td>
<td>Form of petition for review</td>
<td>40</td>
<td>461</td>
</tr>
<tr>
<td>§48A-4-9.</td>
<td>Answer in opposition to a petition for review</td>
<td>40</td>
<td>461</td>
</tr>
<tr>
<td>§48A-4-10.</td>
<td>Circuit court review of master's recommended order</td>
<td>40</td>
<td>462</td>
</tr>
</tbody>
</table>

### Remedies for the Enforcement of Support Obligations and Visitation

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§48A-5-1.</td>
<td>Action to obtain an order for support of minor child</td>
<td>40</td>
<td>463</td>
</tr>
<tr>
<td>§48A-5-3.</td>
<td>Withholding from income of amounts payable as support</td>
<td>40</td>
<td>465</td>
</tr>
</tbody>
</table>

### Revised Uniform Reciprocal Enforcement of Support Act

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§48A-7-14.</td>
<td>Duty of initiating court</td>
<td>40</td>
<td>475</td>
</tr>
</tbody>
</table>

### Vital Statistics

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§16-5-12.</td>
<td>Birth registration generally</td>
<td>40</td>
<td>411</td>
</tr>
<tr>
<td>§16-5-14.</td>
<td>Delayed registration of births</td>
<td>40</td>
<td>413</td>
</tr>
<tr>
<td>§16-5-15.</td>
<td>Judicial procedure to establish facts of birth</td>
<td>40</td>
<td>414</td>
</tr>
<tr>
<td>§16-5-16.</td>
<td>Court reports of adoption</td>
<td>40</td>
<td>416</td>
</tr>
<tr>
<td>§16-5-17.</td>
<td>Court reports of determination of paternity</td>
<td>40</td>
<td>418</td>
</tr>
<tr>
<td>§16-5-18b.</td>
<td>Limitation on use of social security numbers</td>
<td>40</td>
<td>418</td>
</tr>
<tr>
<td>§16-5-24.</td>
<td>Correction and amendment of vital records</td>
<td>40</td>
<td>420</td>
</tr>
</tbody>
</table>

## CHILD WELFARE:

### Adoption

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§48-4-16.</td>
<td>Prohibition of purchase or sale of child; penalty; definitions; exceptions</td>
<td>41</td>
<td>476</td>
</tr>
</tbody>
</table>

### Procedure in Cases of Child Neglect or Abuse

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§49-6-3.</td>
<td>Petition to court when child believed neglected or abused—Temporary custody</td>
<td>42</td>
<td>484</td>
</tr>
</tbody>
</table>

### Purposes; Definitions

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§49-1-3.</td>
<td>Definitions relating to abuse and neglect</td>
<td>41</td>
<td>478</td>
</tr>
<tr>
<td>§49-7-7.</td>
<td>Contributing to delinquency or neglect of a child</td>
<td>41</td>
<td>482</td>
</tr>
</tbody>
</table>

## CIVIL SERVICE:

### Civil Service System

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§29-6-4.</td>
<td>Classified-exempt service; additions to classified service; exemptions</td>
<td>43</td>
<td>487</td>
</tr>
</tbody>
</table>

## CLAIMS:

### Claims Against the State

<table>
<thead>
<tr>
<th>Agency</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjutant General</td>
<td>46</td>
<td>495</td>
</tr>
<tr>
<td>Alcohol Beverage Control Commissioner</td>
<td>46</td>
<td>495</td>
</tr>
<tr>
<td>Attorney General</td>
<td>46</td>
<td>496</td>
</tr>
<tr>
<td>Board of Education</td>
<td>46</td>
<td>495</td>
</tr>
<tr>
<td>Board of Directors, State College System</td>
<td>46</td>
<td>497</td>
</tr>
<tr>
<td>Board of Trustees, WVU</td>
<td>46</td>
<td>497</td>
</tr>
<tr>
<td>Department of Agriculture</td>
<td>46</td>
<td>497</td>
</tr>
<tr>
<td>Department of Corrections</td>
<td>46</td>
<td>497</td>
</tr>
<tr>
<td>Department of Education</td>
<td>44,46</td>
<td>490,498</td>
</tr>
<tr>
<td>Department of Energy</td>
<td>46</td>
<td>498</td>
</tr>
<tr>
<td>Department of Finance and Administration</td>
<td>44,46</td>
<td>491,498</td>
</tr>
<tr>
<td>Department of Health</td>
<td>46</td>
<td>499</td>
</tr>
<tr>
<td>Department of Health—Chief Medical Examiner</td>
<td>46</td>
<td>499</td>
</tr>
<tr>
<td>Department of Highways</td>
<td>46</td>
<td>500</td>
</tr>
<tr>
<td>Department of Human Services</td>
<td>46</td>
<td>503</td>
</tr>
<tr>
<td>Department of Labor</td>
<td>46</td>
<td>503</td>
</tr>
<tr>
<td>Department of Motor Vehicles</td>
<td>46</td>
<td>503</td>
</tr>
<tr>
<td>Department of Natural Resources</td>
<td>46</td>
<td>503</td>
</tr>
</tbody>
</table>
### INDEX

**CLAIMS—(continued):**

<table>
<thead>
<tr>
<th>Agency/Board/Commission</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Public Safety</td>
<td>46</td>
<td>503</td>
</tr>
<tr>
<td>Division of Forestry</td>
<td>46</td>
<td>504</td>
</tr>
<tr>
<td>Education and State Employees Grievance Board</td>
<td>46</td>
<td>504</td>
</tr>
<tr>
<td>Governor’s Office</td>
<td>44</td>
<td>491</td>
</tr>
<tr>
<td>Human Rights Commission</td>
<td>46</td>
<td>504</td>
</tr>
<tr>
<td>Nonintoxicating Beer Commission</td>
<td>46</td>
<td>504</td>
</tr>
<tr>
<td>Public Employees Insurance Agency</td>
<td>46</td>
<td>505</td>
</tr>
<tr>
<td>Public Service Commission</td>
<td>46</td>
<td>505</td>
</tr>
<tr>
<td>Railroad Maintenance Authority</td>
<td>44</td>
<td>491</td>
</tr>
<tr>
<td>Secretary of State</td>
<td>46</td>
<td>505</td>
</tr>
<tr>
<td>State Athletic Commission</td>
<td>46</td>
<td>505</td>
</tr>
<tr>
<td>State Fire Marshal</td>
<td>46</td>
<td>505</td>
</tr>
<tr>
<td>State Tax Department</td>
<td>46</td>
<td>505</td>
</tr>
<tr>
<td>State Treasurer</td>
<td>46</td>
<td>506</td>
</tr>
<tr>
<td>Supreme Court of Appeals</td>
<td>46</td>
<td>506</td>
</tr>
<tr>
<td>Workers’ Compensation Fund</td>
<td>44,46</td>
<td>492,506</td>
</tr>
<tr>
<td>West Virginia, State of</td>
<td>46</td>
<td>506</td>
</tr>
</tbody>
</table>

**Crime Victims**

- Claims for compensation.......................................................... 45  | 492

### CODE AMENDED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>1</td>
<td>17</td>
<td>Election of circuit judges, county and district officers and magistrates.............. 670</td>
</tr>
<tr>
<td>3</td>
<td>4A</td>
<td>12</td>
<td>Ballot label arrangement in vote recording devices................................. 671</td>
</tr>
<tr>
<td>3</td>
<td>5</td>
<td>4,7</td>
<td>Nominations in primary elections, filing announcements of candidates............. 673</td>
</tr>
<tr>
<td>3</td>
<td>10</td>
<td>3</td>
<td>Vacancies in state offices, U. S. senators and judges............................. 676</td>
</tr>
<tr>
<td>4</td>
<td>1</td>
<td>22*</td>
<td>Defining the phrase “next meeting of the Senate” ................................ 1036</td>
</tr>
<tr>
<td>4</td>
<td>3</td>
<td>5*</td>
<td>Charges for use of legislative computer system...................................... 1037</td>
</tr>
<tr>
<td>4</td>
<td>8</td>
<td>1,4</td>
<td>Continuing Capitol Building Commission.................................................. 407</td>
</tr>
<tr>
<td>4</td>
<td>10</td>
<td>4</td>
<td>Rescheduling termination of governmental agencies................................. 1357</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>12</td>
<td>Payment of costs of confinement......................................................... 1200</td>
</tr>
<tr>
<td>5</td>
<td>6</td>
<td>3,4,7</td>
<td>Definitions, powers of state building commission, contracts to be secured by bond......................................................... 11</td>
</tr>
<tr>
<td>5</td>
<td>10</td>
<td>19,22c,54*</td>
<td>Public employees retirement and permitting persons who are elected or appointed to nonremunerative governmental positions to continue to receive incentive annuities......................................................... 1651</td>
</tr>
<tr>
<td>5</td>
<td>18*</td>
<td></td>
<td>Cable Television Systems Act.............................................................. 378</td>
</tr>
<tr>
<td>5A</td>
<td>1</td>
<td>1,2,3,4,5,6,7,8*</td>
<td>Department of Administration, delegation of powers and duties by secretary, right of appeal from interference with functioning of agency................................................................. 17</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
CODE AMENDED—(Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5A</td>
<td>1</td>
<td>9*</td>
<td></td>
</tr>
<tr>
<td>5A</td>
<td>1A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5A</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5A</td>
<td>3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Reporting of state assets held to secretary of administration and state treasurer

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5A</td>
<td>3</td>
<td>14</td>
<td></td>
</tr>
</tbody>
</table>

- Bid specifications, bids on school buses, copies of purchase orders sent to finance division

- Central nonprofit coordinating agency and committee for the purchase of commodities and service from the handicapped

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5A</td>
<td>4</td>
<td>1,2,3,4,5</td>
<td>86</td>
</tr>
<tr>
<td>5A</td>
<td>5</td>
<td>1,2,3</td>
<td>91</td>
</tr>
<tr>
<td>5A</td>
<td>7</td>
<td>1,2,3,4,5,6,7,8,9,10,11*</td>
<td>93</td>
</tr>
<tr>
<td>5A</td>
<td>8</td>
<td>1,2,3,4,5,6,7,8* through 19*</td>
<td>98</td>
</tr>
</tbody>
</table>

- General Services Division
- Governor's Mansion Advisory Committee
- Information Services and Communications Division
- Public Records Management and Preservation Act
- Special fund for deposit of voluntary contributions for guilding capitol dome

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5B</td>
<td>1</td>
<td>1,2,4,5,6,6a,7,8,10,12,12b,13,15,16,17,18</td>
<td>608</td>
</tr>
</tbody>
</table>

- Prohibiting the transfer of Plum Orchard Lake, Pleasants Creek, Big Ditch Lake and Teeter Creek
- Moncove Lake State Park
- General powers of Office of Community and Industrial Development, divisions created
- West Virginia Guaranteed Work Force Program
- Small Business Expansion Assistance Program
- Public Energy Authority
- Definitions, Capital Company Act
- Transferring administration of crime victims compensation fund from Department of Public Safety to Court of Claims
- Administration of Department of Veterans' Affairs and Veterans' Council transferred from Department of Health and Human Resources to Department of Public Safety

*Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5G*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6B</td>
<td>1</td>
<td>4</td>
<td>297</td>
</tr>
<tr>
<td>6B</td>
<td>2</td>
<td>3,4,5,7,8</td>
<td>709</td>
</tr>
<tr>
<td>6B</td>
<td>2A*</td>
<td></td>
<td>709</td>
</tr>
<tr>
<td>6B</td>
<td>3</td>
<td>4</td>
<td>733</td>
</tr>
<tr>
<td>7</td>
<td>5</td>
<td>22</td>
<td>1312</td>
</tr>
<tr>
<td>7</td>
<td>14</td>
<td>15a,19a</td>
<td>920</td>
</tr>
<tr>
<td>7</td>
<td>14</td>
<td>17b</td>
<td>596</td>
</tr>
<tr>
<td>7</td>
<td>20*</td>
<td></td>
<td>1042</td>
</tr>
<tr>
<td>8</td>
<td>11</td>
<td>1,1a</td>
<td>533</td>
</tr>
<tr>
<td>8</td>
<td>14</td>
<td>3</td>
<td>921</td>
</tr>
<tr>
<td>8</td>
<td>18</td>
<td>23</td>
<td>1145</td>
</tr>
<tr>
<td>8</td>
<td>19</td>
<td></td>
<td>1151</td>
</tr>
<tr>
<td>8</td>
<td>19</td>
<td>12a</td>
<td>1148</td>
</tr>
<tr>
<td>8</td>
<td>20</td>
<td>10</td>
<td>1149</td>
</tr>
<tr>
<td>8</td>
<td>22</td>
<td>13,26a</td>
<td>1245</td>
</tr>
<tr>
<td>9</td>
<td>5</td>
<td>14</td>
<td>1306</td>
</tr>
<tr>
<td>9A</td>
<td>2</td>
<td>1</td>
<td>1507</td>
</tr>
<tr>
<td>10</td>
<td>1</td>
<td>14</td>
<td></td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
### INDEX

**CODE AMENDED—(Continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>1</td>
<td>22*</td>
<td>1246</td>
</tr>
<tr>
<td>11</td>
<td>1C*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>3</td>
<td>9</td>
<td>1360</td>
</tr>
<tr>
<td>11</td>
<td>6B</td>
<td>2,3,12</td>
<td>1388</td>
</tr>
<tr>
<td>11</td>
<td>8</td>
<td>6e*,6f*</td>
<td>1646</td>
</tr>
<tr>
<td>11</td>
<td>10</td>
<td>3</td>
<td>1380</td>
</tr>
<tr>
<td>11</td>
<td>13C</td>
<td>14*</td>
<td>1391</td>
</tr>
<tr>
<td>11</td>
<td>15</td>
<td>2,9,33</td>
<td>1417</td>
</tr>
<tr>
<td>11</td>
<td>15</td>
<td>9a</td>
<td>1394</td>
</tr>
<tr>
<td>11</td>
<td>16</td>
<td>8,22,23,24</td>
<td>362</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>8a through 8f*</td>
<td>1429</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>9,55</td>
<td>1434</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
<td>18;71a*</td>
<td>170</td>
</tr>
<tr>
<td>11</td>
<td>23</td>
<td>3a,5</td>
<td>1412</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
<td>3,13,13a</td>
<td>1439</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
<td>23a through 23f*</td>
<td>1446</td>
</tr>
<tr>
<td>11A</td>
<td>1</td>
<td>3</td>
<td>1391</td>
</tr>
<tr>
<td>12</td>
<td>1</td>
<td>10;13*</td>
<td>1451</td>
</tr>
<tr>
<td>12</td>
<td>1</td>
<td></td>
<td>1455</td>
</tr>
<tr>
<td>12</td>
<td>3</td>
<td>17</td>
<td>107</td>
</tr>
<tr>
<td>12</td>
<td>4</td>
<td>13*</td>
<td>1463</td>
</tr>
<tr>
<td>12</td>
<td>5</td>
<td>5</td>
<td>1456</td>
</tr>
<tr>
<td>12</td>
<td>6</td>
<td>4,5,6,9,9c,15</td>
<td>1456</td>
</tr>
<tr>
<td>12</td>
<td>6</td>
<td>5a*</td>
<td>374</td>
</tr>
</tbody>
</table>

*Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>6</td>
<td>18*</td>
<td>376</td>
</tr>
<tr>
<td>14</td>
<td>2A</td>
<td>4,14,26</td>
<td>376</td>
</tr>
<tr>
<td>14</td>
<td>2A</td>
<td>14</td>
<td>591</td>
</tr>
<tr>
<td>14</td>
<td>3</td>
<td>1</td>
<td>543</td>
</tr>
<tr>
<td>15</td>
<td>1B</td>
<td>23*</td>
<td>107</td>
</tr>
<tr>
<td>15</td>
<td>2</td>
<td>4,5</td>
<td>1173</td>
</tr>
<tr>
<td>15</td>
<td>2</td>
<td>12</td>
<td>1247</td>
</tr>
<tr>
<td>15</td>
<td>2</td>
<td>25</td>
<td>1252</td>
</tr>
<tr>
<td>15</td>
<td>2</td>
<td>43*</td>
<td>1256</td>
</tr>
<tr>
<td>15</td>
<td>5</td>
<td>2,4,12,23,24,25,26,27*</td>
<td>1659</td>
</tr>
<tr>
<td>16</td>
<td>1</td>
<td>10</td>
<td>749</td>
</tr>
<tr>
<td>16</td>
<td>1</td>
<td>21*</td>
<td>758</td>
</tr>
<tr>
<td>16</td>
<td>2D</td>
<td>2,4</td>
<td>760</td>
</tr>
<tr>
<td>16</td>
<td>2D</td>
<td>5</td>
<td>776</td>
</tr>
<tr>
<td>16</td>
<td>2G</td>
<td>1</td>
<td>1659</td>
</tr>
<tr>
<td>16</td>
<td>5</td>
<td>12,14,15,16,17,18b,24</td>
<td>411</td>
</tr>
<tr>
<td>16</td>
<td>20</td>
<td>5,8,9</td>
<td>1659</td>
</tr>
<tr>
<td>16</td>
<td>29</td>
<td>1,2</td>
<td>780</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>29C</td>
<td>4.5</td>
<td>Termination date, Task Force on Uncompensated Health Care and Medicaid Expenditures</td>
</tr>
<tr>
<td>16</td>
<td>30A*</td>
<td></td>
<td>Medical Power of Attorney Act</td>
</tr>
<tr>
<td>17</td>
<td>16A</td>
<td>18:18a*</td>
<td>Continued toll collection at intersection of U. S. Route 19 and the Turnpike, commuter pass system</td>
</tr>
<tr>
<td>17</td>
<td>16C*</td>
<td></td>
<td>West Virginia Wayport Authority</td>
</tr>
<tr>
<td>17A</td>
<td>3</td>
<td>4</td>
<td>Certification of title tax</td>
</tr>
<tr>
<td>17A</td>
<td>3</td>
<td>14</td>
<td>Registration plates</td>
</tr>
<tr>
<td>17A</td>
<td>4</td>
<td>10</td>
<td>Salvage certificates for certain wrecked or damaged vehicles</td>
</tr>
<tr>
<td>17A</td>
<td>6</td>
<td>1a*</td>
<td>Unlawful to be an automobile broker</td>
</tr>
<tr>
<td>17A</td>
<td>6</td>
<td>1,4,5,10,15</td>
<td>Licensing of wreckers, dismantlers and rebuilders</td>
</tr>
<tr>
<td>17A</td>
<td>6A</td>
<td>8a*</td>
<td>Compensation to dealers for service rendered on warranty and factory recall work</td>
</tr>
<tr>
<td>17A</td>
<td>6B*</td>
<td></td>
<td>License services</td>
</tr>
<tr>
<td>17A</td>
<td>8</td>
<td>9</td>
<td>Theft of a rented or leased vehicle</td>
</tr>
<tr>
<td>17A</td>
<td>8</td>
<td>13*</td>
<td>Theft of a motor vehicle offered for sale which has been obtained for temporary use for demonstration purposes</td>
</tr>
<tr>
<td>17A</td>
<td>10</td>
<td>3</td>
<td>Registration fees for certain classes of vehicles</td>
</tr>
<tr>
<td>17B</td>
<td>1</td>
<td>1</td>
<td>Driver licenses, words and phrases defined</td>
</tr>
<tr>
<td>17B</td>
<td>1D*</td>
<td></td>
<td>Motorcycle safety education</td>
</tr>
<tr>
<td>17B</td>
<td>2</td>
<td>1,5,7b*,7c*,8,12,15*</td>
<td>Issuance, expiration and renewal of license</td>
</tr>
<tr>
<td>17C</td>
<td>12</td>
<td>7</td>
<td>Overtaking and passing school buses</td>
</tr>
<tr>
<td>17C</td>
<td>13</td>
<td>6</td>
<td>Handicapped parking and violations by nonhandicapped persons</td>
</tr>
<tr>
<td>17C</td>
<td>15</td>
<td>48</td>
<td>Altered suspension systems</td>
</tr>
<tr>
<td>17D</td>
<td>2A</td>
<td>5,7</td>
<td>Suspension of driver license</td>
</tr>
<tr>
<td>18</td>
<td>2</td>
<td>5a</td>
<td>State Board of Education rules to be filed with Legislature</td>
</tr>
<tr>
<td>18</td>
<td>2</td>
<td>5b*</td>
<td>State Board of Education, Medicaid eligible children</td>
</tr>
<tr>
<td>18</td>
<td>2B</td>
<td>2a*</td>
<td>County withdrawal from multi-county vocational center prohibited</td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>13</td>
<td>General authority, county boards of education</td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>15</td>
<td>Reducing number of days to be used outside school environment</td>
</tr>
<tr>
<td>18</td>
<td>8</td>
<td>1</td>
<td>Commencement and termination of compulsory school attendance</td>
</tr>
<tr>
<td>18</td>
<td>9A</td>
<td>4,5,5a,7,9,10,13,13b</td>
<td>Foundation allowances</td>
</tr>
<tr>
<td>18</td>
<td>9A</td>
<td>11</td>
<td>Computation of local share, appraisal and assessment of property</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Page</th>
<th>Code Amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1578</td>
<td>Submission of budget</td>
</tr>
<tr>
<td>1578</td>
<td>Special programs and teaching services for exceptional children, preschool programs for handicapped children</td>
</tr>
<tr>
<td>657</td>
<td>Commercial driver's license for school personnel</td>
</tr>
<tr>
<td>1581</td>
<td>Assignment, transfer, promotion, demotion, suspension and dismissal of school personnel</td>
</tr>
<tr>
<td>658</td>
<td>In-field master's degree</td>
</tr>
<tr>
<td>1583</td>
<td>County salary supplements for teachers, school service personnel, 1990 appropriation for salary equity and substitute teachers' pay</td>
</tr>
<tr>
<td>663</td>
<td>Competency testing for service personnel</td>
</tr>
<tr>
<td>643</td>
<td>Including Martin Luther King Day as a legal school holiday</td>
</tr>
<tr>
<td>1588</td>
<td>Colleges and universities to provide appropriate services to meet needs of students with handicapping conditions</td>
</tr>
<tr>
<td>666</td>
<td>Advisory councils of faculty and of classified employees</td>
</tr>
<tr>
<td>112</td>
<td>Applicant for public market permit to furnish surety bond</td>
</tr>
<tr>
<td>114</td>
<td>State-funded raise for cooperative extension service employees</td>
</tr>
<tr>
<td>117</td>
<td>Additional definition of &quot;dealer&quot; and increasing penalty for violation of article governing noxious weeds</td>
</tr>
<tr>
<td>739</td>
<td>Farm Management Commission continued, powers, duties and responsibilities, appointment of director, special revenue account, effect of management plan on employees</td>
</tr>
<tr>
<td>120</td>
<td>Agricultural liming materials law</td>
</tr>
<tr>
<td>129</td>
<td>WV Pesticide Control Act</td>
</tr>
<tr>
<td>800</td>
<td>Powers and authority of Racing Commission</td>
</tr>
<tr>
<td>804</td>
<td>Televised racing days</td>
</tr>
<tr>
<td>748</td>
<td>Continuing the U. S Geological Survey</td>
</tr>
<tr>
<td>1174</td>
<td>Sales of public land to federal or state entities for less than fair market value</td>
</tr>
<tr>
<td>813</td>
<td>Compensation of county officials and agents for issuance of hunting, trapping and fishing licenses</td>
</tr>
<tr>
<td>814</td>
<td>Class A-1 small arms hunting license</td>
</tr>
<tr>
<td>816</td>
<td>Minimum legal bore diameter permitted for muzzle-loading hunting of deer</td>
</tr>
<tr>
<td>1198</td>
<td>Negligent shooting, wounding or killing of human beings or livestock while hunting, and shooting across road or near building or crowd</td>
</tr>
</tbody>
</table>

*Indicates new chapter, article or section.
CODE AMENDED—(Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>2C*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>4*</td>
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<td>20</td>
<td>5F</td>
<td>1,2,4a;4b*;5,5b,5c</td>
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</tr>
<tr>
<td>20</td>
<td>5H</td>
<td>6,22</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>9</td>
<td>1,2,7;10a through 10j*;12,12a,12b,12c;12d*</td>
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</tr>
<tr>
<td>20</td>
<td>11</td>
<td>5</td>
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<td>21A</td>
<td>4</td>
<td>6</td>
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<tr>
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<td>5</td>
<td>10,10a</td>
<td>1477</td>
</tr>
<tr>
<td>21A</td>
<td>6</td>
<td>3</td>
<td>1484</td>
</tr>
<tr>
<td>21A</td>
<td>8A</td>
<td>8</td>
<td>1490</td>
</tr>
<tr>
<td>21A</td>
<td>9</td>
<td>9*</td>
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</tr>
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<td>10</td>
<td>7,8,11,19</td>
<td></td>
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<td>1</td>
<td>2,5,7a*</td>
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<td>22</td>
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<td>1639</td>
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<td>1</td>
<td>1526</td>
</tr>
<tr>
<td>23</td>
<td>2</td>
<td>4,5a,9,14*,15*;16*,17*,18</td>
<td>1684</td>
</tr>
<tr>
<td>23</td>
<td>2A*</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
CODE AMENDED—(Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>3</td>
<td>1</td>
<td>Workers’ Compensation Fund</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>1</td>
<td>Workers’ Compensation, disability and death benefits</td>
</tr>
<tr>
<td>23</td>
<td>4B</td>
<td>8</td>
<td>Coal Workers’ Pneumoconiosis Fund and transfers to Workers’ Compensation Fund</td>
</tr>
<tr>
<td>23</td>
<td>5</td>
<td>1</td>
<td>Workers’ Compensation, review by Commissioner</td>
</tr>
<tr>
<td>23</td>
<td>5A</td>
<td>3</td>
<td>Termination of Workers’ Compensation benefits of injured employees prohibited under certain circumstances</td>
</tr>
<tr>
<td>24</td>
<td>2</td>
<td>3c*</td>
<td>Cessation of PSC jurisdiction over rates for certain services of telephone utilities</td>
</tr>
<tr>
<td>24</td>
<td>2</td>
<td>4b</td>
<td>Ratemaking jurisdiction for access charges of telephone cooperatives conferred upon PSC</td>
</tr>
<tr>
<td>24</td>
<td>6</td>
<td>2,3</td>
<td>Regulation of local emergency telephone systems</td>
</tr>
<tr>
<td>25</td>
<td>1</td>
<td>2</td>
<td>Division of Corrections continued</td>
</tr>
<tr>
<td>25</td>
<td>1</td>
<td>17*</td>
<td>Monitoring of inmate telephone calls</td>
</tr>
<tr>
<td>25</td>
<td>5*</td>
<td></td>
<td>Private prisons</td>
</tr>
<tr>
<td>27</td>
<td>11</td>
<td>1</td>
<td>Removing requirement that a duly licensed physician treating a person subject to a competency hearing be licensed in the state</td>
</tr>
<tr>
<td>28</td>
<td>5B</td>
<td>13,14</td>
<td>Appropriation for buildings, equipment, etc., and increasing maximum permissible amount on deposit in prison industries account</td>
</tr>
<tr>
<td>29</td>
<td>1</td>
<td>5;6b*;7</td>
<td>Issuance of permits for excavation, destruction or removal of historic ruins, burial grounds, etc</td>
</tr>
<tr>
<td>29</td>
<td>1A</td>
<td>2a*</td>
<td>Life members of the Commission on Uniform State Laws</td>
</tr>
<tr>
<td>29</td>
<td>3</td>
<td>5b</td>
<td>Removing requirement that a copy of state fire code and amendments thereto be filed with each county clerk</td>
</tr>
<tr>
<td>29</td>
<td>3</td>
<td>16b*</td>
<td>Use of live trees in public buildings</td>
</tr>
<tr>
<td>29</td>
<td>3B</td>
<td>4</td>
<td>Journeyman electrician’s test and granting of license</td>
</tr>
<tr>
<td>29</td>
<td>6</td>
<td>4</td>
<td>Exemptions to coverage under classified civil service</td>
</tr>
<tr>
<td>29</td>
<td>6</td>
<td>7,23</td>
<td>Director of personnel, division of personnel created</td>
</tr>
<tr>
<td>29</td>
<td>8</td>
<td>2</td>
<td>Regulatory authority over water transport of visitors to Blennerhassett Island</td>
</tr>
<tr>
<td>29</td>
<td>12</td>
<td>5c</td>
<td>Insurance for damages allegedly resulting from obstetric treatment of medicaid patients</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
CODE AMENDED—(Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>29</td>
<td>19</td>
<td>3.6,7,8,9,13,15</td>
<td>1600</td>
</tr>
<tr>
<td>29</td>
<td>20</td>
<td>1</td>
<td>1524</td>
</tr>
<tr>
<td>29</td>
<td>21</td>
<td>2.5,6,7,8,9,10,11,12,13,13a*,15,16,17,19,21*</td>
<td>1524</td>
</tr>
<tr>
<td>29</td>
<td>22</td>
<td>9,10,13,18,19,20,21</td>
<td>1224</td>
</tr>
<tr>
<td>29A</td>
<td>1</td>
<td>3</td>
<td>1054</td>
</tr>
<tr>
<td>29A</td>
<td>3A</td>
<td>1,11a</td>
<td>645</td>
</tr>
<tr>
<td>29A</td>
<td>3B*</td>
<td></td>
<td>646</td>
</tr>
<tr>
<td>30</td>
<td>3</td>
<td>4</td>
<td>799</td>
</tr>
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<td>30</td>
<td>3</td>
<td>9</td>
<td>1203</td>
</tr>
<tr>
<td>30</td>
<td>12</td>
<td>6a*</td>
<td>1207</td>
</tr>
<tr>
<td>30</td>
<td>26</td>
<td>3,5,7,9,12</td>
<td>1217</td>
</tr>
<tr>
<td>31</td>
<td>15</td>
<td>6a*</td>
<td>638</td>
</tr>
<tr>
<td>31</td>
<td>20</td>
<td>20</td>
<td>535</td>
</tr>
<tr>
<td>31A</td>
<td>3</td>
<td>1</td>
<td>313</td>
</tr>
<tr>
<td>31A</td>
<td>4</td>
<td>3</td>
<td>317</td>
</tr>
<tr>
<td>31A</td>
<td>4</td>
<td>44*</td>
<td>324</td>
</tr>
<tr>
<td>31A</td>
<td>8A</td>
<td>1,7</td>
<td>318</td>
</tr>
<tr>
<td>33</td>
<td>3</td>
<td>5b*;17*</td>
<td>820</td>
</tr>
<tr>
<td>33</td>
<td>3</td>
<td>13</td>
<td>821</td>
</tr>
<tr>
<td>33</td>
<td>10</td>
<td>1,2,3,4,5,7,8,10,14,18,19a,21,29,36;37*;38*;39*</td>
<td>828</td>
</tr>
<tr>
<td>33</td>
<td>12</td>
<td>2,6;8a*;29*</td>
<td>887</td>
</tr>
<tr>
<td>33</td>
<td>12</td>
<td>2a*</td>
<td>823</td>
</tr>
<tr>
<td>33</td>
<td>14</td>
<td>7</td>
<td>891</td>
</tr>
<tr>
<td>33</td>
<td>15</td>
<td>4d*</td>
<td>894</td>
</tr>
<tr>
<td>33</td>
<td>16</td>
<td>3h*</td>
<td>895</td>
</tr>
</tbody>
</table>

Solicitation of charitable funds
Women's Commission continued and correcting designation of ex officio members
Public defender services
State Lottery Act
Administrative procedures, definitions, application of chapter
Definitions, additional powers and duties of Legislative Oversight Commission on Education Accountability
State Board of Education Rule Making
Designee of Director of Health permitted to be a member of the Board of Medicine
Voluntary agreement of physicians to seek alcohol or chemical dependency treatment to be confidential
Architects
License fees for hearing-aid dealers and fitters to be established by rule
Special power of Economic Development Authority to transfer funds, use of such funds
Increasing maximum amount of indebtedness of Regional Jail and Correctional Facility Authority
Bank assets required to qualify as member of board of banking and financial institutions
Minimum capital stock
Revealing certain employment information by banking institutions
Acquisition of bank shares by foreign banks
Insurance licensing fees, capital and surplus requirements and taxation of insurers
Insurance license fees and charges
Rehabilitation and liquidation
Qualifications, fees, licensing of nonresident property casualty agents, change of address
Continuing education program for insurance agents
Dependent coverage, group life insurance
Third party reimbursement for rehabilitation services
Third party reimbursement for rehabilitation services, group accident and sickness insurance

* Indicates new chapter, article or section.
## INDEX

### CODE AMENDED—(Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>16A</td>
<td>14</td>
<td>902</td>
</tr>
<tr>
<td>33</td>
<td>17A*</td>
<td></td>
<td>904</td>
</tr>
<tr>
<td>33</td>
<td>20</td>
<td>18</td>
<td>911</td>
</tr>
<tr>
<td>33</td>
<td>22</td>
<td>2</td>
<td>847</td>
</tr>
<tr>
<td>33</td>
<td>23</td>
<td>2</td>
<td>848</td>
</tr>
<tr>
<td>33</td>
<td>24</td>
<td>4</td>
<td>913</td>
</tr>
<tr>
<td>33</td>
<td>24</td>
<td>4:14</td>
<td>848</td>
</tr>
<tr>
<td>33</td>
<td>24</td>
<td>7c*</td>
<td>897</td>
</tr>
<tr>
<td>33</td>
<td>25</td>
<td>8b*</td>
<td>899</td>
</tr>
<tr>
<td>33</td>
<td>25</td>
<td>19*</td>
<td>876</td>
</tr>
<tr>
<td>33</td>
<td>25A</td>
<td>8b*</td>
<td>900</td>
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<td>33</td>
<td>25A</td>
<td>30*</td>
<td>876</td>
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<tr>
<td>33</td>
<td>31</td>
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</tr>
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<td>35*</td>
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<td>884</td>
</tr>
<tr>
<td>36</td>
<td>8</td>
<td>8:8a*, 11,16,18</td>
<td>1470</td>
</tr>
<tr>
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<td>14*</td>
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<td>2</td>
<td>102,103</td>
<td>520</td>
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<td>2</td>
<td>128</td>
<td>525</td>
</tr>
<tr>
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<td>2</td>
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<td>518</td>
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<tr>
<td>46A</td>
<td>3</td>
<td>109</td>
<td>527</td>
</tr>
</tbody>
</table>

*Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>47</td>
<td>1A</td>
<td>14</td>
<td>1305</td>
</tr>
<tr>
<td>47</td>
<td>10</td>
<td>6a*</td>
<td>748</td>
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<td>47</td>
<td>21</td>
<td>2,7</td>
<td>1268</td>
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<td>1</td>
<td>2</td>
<td>323</td>
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<td>48</td>
<td>2</td>
<td>1,15,15a; 15b*; 27,33</td>
<td>421</td>
</tr>
<tr>
<td>48</td>
<td>15b</td>
<td>15b Withholding child support payments from income</td>
<td>1611</td>
</tr>
<tr>
<td>48A</td>
<td>2</td>
<td>1</td>
<td>408</td>
</tr>
<tr>
<td>48A</td>
<td>2</td>
<td>2,7</td>
<td>437</td>
</tr>
<tr>
<td>48A</td>
<td>3</td>
<td>1,2,3,6,8</td>
<td>440</td>
</tr>
<tr>
<td>48A</td>
<td>3</td>
<td>6</td>
<td>1613</td>
</tr>
<tr>
<td>48A</td>
<td>4</td>
<td>1,2;2a*;3,4; 4a*;5,6,7,8,9,10</td>
<td>447</td>
</tr>
<tr>
<td>48A</td>
<td>5</td>
<td>1,3</td>
<td>463</td>
</tr>
<tr>
<td>48A</td>
<td>6</td>
<td>5,6</td>
<td>473</td>
</tr>
<tr>
<td>48A</td>
<td>7</td>
<td>14</td>
<td>475</td>
</tr>
<tr>
<td>49</td>
<td>1</td>
<td>3</td>
<td>478</td>
</tr>
<tr>
<td>49</td>
<td>6</td>
<td>3</td>
<td>484</td>
</tr>
<tr>
<td>49</td>
<td>7</td>
<td>7</td>
<td>482</td>
</tr>
<tr>
<td>50</td>
<td>3</td>
<td>1,2,4a</td>
<td>535</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1</td>
<td>677</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1a</td>
<td>569</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1p</td>
<td>570</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
### CODE AMENDED—(Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>51</td>
<td>4</td>
<td>3</td>
<td>570</td>
</tr>
<tr>
<td>51</td>
<td>7</td>
<td>4</td>
<td>572</td>
</tr>
<tr>
<td>54</td>
<td>3</td>
<td>1</td>
<td>702</td>
</tr>
<tr>
<td>55</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>56</td>
<td>3</td>
<td>31</td>
<td>1140</td>
</tr>
<tr>
<td>57</td>
<td>3</td>
<td>9*</td>
<td>736</td>
</tr>
<tr>
<td>57</td>
<td>5</td>
<td>4</td>
<td>475</td>
</tr>
<tr>
<td>57</td>
<td>5</td>
<td>12*</td>
<td>737</td>
</tr>
<tr>
<td>58</td>
<td>5</td>
<td>4,16,17</td>
<td>574</td>
</tr>
<tr>
<td>59</td>
<td>1</td>
<td>11,28a</td>
<td>537</td>
</tr>
<tr>
<td>60</td>
<td>3A*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>60</td>
<td>7</td>
<td>11</td>
<td>171</td>
</tr>
<tr>
<td>61</td>
<td>1</td>
<td>9*</td>
<td>193</td>
</tr>
<tr>
<td>61</td>
<td>3</td>
<td>49</td>
<td>576</td>
</tr>
<tr>
<td>61</td>
<td>5</td>
<td>8,9,10,12</td>
<td>559</td>
</tr>
<tr>
<td>61</td>
<td>8E*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>62</td>
<td>11B*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>64</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### CODE REPEALED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>2</td>
<td>1a</td>
<td>639</td>
</tr>
<tr>
<td>5</td>
<td>8</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>5A</td>
<td>1</td>
<td>2a,2b,2c</td>
<td>10</td>
</tr>
<tr>
<td>5A</td>
<td>2</td>
<td>19a,33,35,36</td>
<td>10</td>
</tr>
</tbody>
</table>

*Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5A</td>
<td>3</td>
<td>14a</td>
<td>10</td>
</tr>
<tr>
<td>5A</td>
<td>4</td>
<td>1a,6,7</td>
<td>10</td>
</tr>
<tr>
<td>5A</td>
<td>4A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5A</td>
<td>5</td>
<td>4,5</td>
<td>10</td>
</tr>
<tr>
<td>5A</td>
<td>8</td>
<td>3a</td>
<td>10</td>
</tr>
<tr>
<td>5B</td>
<td>2</td>
<td>5</td>
<td>608</td>
</tr>
<tr>
<td>5B</td>
<td>3</td>
<td></td>
<td>608</td>
</tr>
<tr>
<td>8</td>
<td>12</td>
<td>20</td>
<td>1144</td>
</tr>
<tr>
<td>11</td>
<td>10</td>
<td>10a</td>
<td>1393</td>
</tr>
<tr>
<td>15</td>
<td>2</td>
<td>1a,9</td>
<td></td>
</tr>
<tr>
<td>17D</td>
<td>4</td>
<td>1,9,10,11,13,20</td>
<td>1247</td>
</tr>
<tr>
<td>18</td>
<td>9A</td>
<td>14</td>
<td>1555</td>
</tr>
<tr>
<td>19</td>
<td>12A</td>
<td>9</td>
<td>738</td>
</tr>
<tr>
<td>19</td>
<td>16B</td>
<td></td>
<td>129</td>
</tr>
<tr>
<td>28</td>
<td>1</td>
<td>9,10,11</td>
<td>567</td>
</tr>
<tr>
<td>46A</td>
<td>7</td>
<td>116</td>
<td>531</td>
</tr>
<tr>
<td>48</td>
<td>1</td>
<td>16</td>
<td>597</td>
</tr>
<tr>
<td>48A</td>
<td>3</td>
<td>5</td>
<td>411</td>
</tr>
<tr>
<td>48A</td>
<td>5</td>
<td>7</td>
<td>411</td>
</tr>
<tr>
<td>61</td>
<td>7</td>
<td>12,13</td>
<td>1198</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## INDEX

### CONSUMER CREDIT AND PROTECTION:
- **Consumer Affairs Advisory Council**
  - Repeal of section creating .................................................. 51 531
- **Consumer Credit Protection**
  - §46A-2-139. Unlawful commercial facsimile transmission; right of action for injunction, damages ........................................ 47 518
  - §46A-2-102. Assignee subject to claims and defenses .................................................. 48 520
  - §46A-2-103. Lender subject to claims and defenses arising from sales.................................................. 48 522
  - §48A-2-128. Unfair or unconscionable means of debt collection ........................................ 49 525

### Finance Charges and Related Provisions
- §46A-3-109. Additional charges; insurance; when refund required; civil penalty .................................................. 50 527

### Short Title, Definitions and General Provisions
- §46A-1-102. General definitions ........................................................................ 47 507

### CORRECTIONS:
- **Commitment of Youthful Male Offenders**
  - §1. Repeal of sections relating to payment by counties of costs of detention of youths by commissioner of corrections .................................................. 56 567
- **Compensation Awards to Victims of Crimes**
  - §14-2A-14. Grounds for denial of claims or reduction of award; maximum awards; awards for emotional distress; mental anguish, etc .................................................. 53,67 543,593
- **Crimes Against Public Justice**
  - §61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody, imprisoned or in detention; penalties .................................................. 53 559
  - §61-5-9. Permitting escape; refusal of custody of prisoner; penalties .................................................. 53 561
  - §61-5-10. Jail or private prison breaking by convicted or unconvicted prisoner; penalties .................................................. 53 562
  - §61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties .................................................. 53 562
- **Fees and Allowances**
  - §59-1-11. Fees to be charged by clerk of circuit court ........................................................................ 52 537
  - §59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases .................................................. 52 539
- **Magistrate Courts**
  - §50-3-1. Costs in civil actions ........................................................................ 52 535
  - §50-3-2. Costs in criminal proceedings ........................................................................ 52 536
  - §50-3-4a. Disposition of criminal costs and civil filing fees into state treasury account for regional jail and prison development fund .................................................. 52 537
- **Municipal Corporations**
  - §8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines against nonresidents .................................................. 52 533
  - §8-11-1a. Disposition of criminal costs into state treasury account for regional jail and prison development fund .................................................. 52 534
- **Organization and Institutions**
  - §25-1-2. Reestablishment of division; findings ........................................................................ 54 564
  - §25-1-17. Monitoring of inmate and patient telephone calls; procedures and restrictions; calls to attorneys excepted ........................................................................ 55 565
## CORRECTIONS—(continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§28-5B-13.</td>
<td>57</td>
</tr>
<tr>
<td>§28-5B-14.</td>
<td>57</td>
</tr>
</tbody>
</table>

### Private Prisons

| §25-5-1. | 53 | 546 |
| §25-5-2. | 53 | 546 |
| §25-5-3. | 53 | 546 |
| §25-5-4. | 53 | 548 |
| §25-5-5. | 53 | 549 |
| §25-5-6. | 53 | 549 |
| §25-5-7. | 53 | 549 |
| §25-5-8. | 53 | 549 |
| §25-5-9. | 53 | 550 |
| §25-5-10. | 53 | 551 |
| §25-5-11. | 53 | 552 |
| §25-5-12. | 53 | 554 |
| §25-5-13. | 53 | 555 |
| §25-5-14. | 53 | 555 |
| §25-5-15. | 53 | 556 |
| §25-5-16. | 53 | 556 |
| §25-5-17. | 53 | 557 |
| §25-5-18. | 53 | 558 |
| §25-5-19. | 53 | 558 |
| §25-5-20. | 53 | 558 |

### Regional Jail and Correctional Facility Authority

| §31-50-20. | 52 | 535 |

## COURTS AND THEIR OFFICERS:

### Appellate Relief in Supreme Court of Appeals

| §58-5-4. | 62 | 574 |
| §58-5-16. | 62 | 575 |
| §58-5-17. | 62 | 575 |

### Circuit Courts; Circuit Judges

| §51-2-1a. | 58 | 569 |
| §51-2-1p. | 58 | 570 |

### General Provisions Relating to Clerks of Courts

| §51-4-3. | 60 | 571 |

### Official Reporters

| §51-7-4. | 61 | 572 |

## CRIMES AND THEIR PUNISHMENT:

### Crimes Against the Government

| §61-1-9. | 63 | 577 |

### Crimes Against Property

| §61-3-49. | 64 | 578 |
## CRIMES AND THEIR PUNISHMENT—(continued):

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§61-8E-1</td>
<td>Legislative purpose</td>
<td>65 580</td>
</tr>
<tr>
<td>§61-8E-2</td>
<td>Definitions</td>
<td>65 580</td>
</tr>
<tr>
<td>§61-8E-3</td>
<td>Labeling of video movies designated for sale or rental; penalties</td>
<td>65 581</td>
</tr>
</tbody>
</table>

## CRIME VICTIMS:

### Compensation Awards to Victims of Crimes

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§14-2A-4</td>
<td>Creation of crime victims compensation fund</td>
<td>67 592</td>
</tr>
<tr>
<td>§14-2A-14</td>
<td>Grounds for denial of claim or reduction of awards; maximum awards; awards for emotional distress; mental anguish, etc</td>
<td>53, 67 543, 593</td>
</tr>
<tr>
<td>§14-2A-26</td>
<td>Rules and regulations</td>
<td>67 595</td>
</tr>
</tbody>
</table>

## Transfer of Agencies and Boards

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5F-2-1</td>
<td>Transfer and incorporation of agencies and boards</td>
<td>66, 187 581, 1497</td>
</tr>
</tbody>
</table>

## DEPUTIES:

See LAW-ENFORCEMENT OFFICERS.

## DOMESTIC RELATIONS:

### Marriage

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§1</td>
<td>Repeal of section relating to marriages between colored persons</td>
<td>69 597</td>
</tr>
</tbody>
</table>

### Prevention of Domestic Violence

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§48-2A-1</td>
<td>Purpose</td>
<td>70 598</td>
</tr>
<tr>
<td>§48-2A-2</td>
<td>Definitions</td>
<td>70 598</td>
</tr>
<tr>
<td>§48-2A-3</td>
<td>Jurisdiction; effect of complaining party leaving residence; priority of petitions filed under this article</td>
<td>70 599</td>
</tr>
<tr>
<td>§48-2A-4</td>
<td>Commencement of proceeding; counterclaim</td>
<td>70 599</td>
</tr>
<tr>
<td>§48-2A-5</td>
<td>Temporary orders of court; hearings</td>
<td>70 600</td>
</tr>
<tr>
<td>§48-2A-6</td>
<td>Protective orders</td>
<td>70 601</td>
</tr>
<tr>
<td>§48-2A-7</td>
<td>Contempt</td>
<td>70 602</td>
</tr>
<tr>
<td>§48-2A-8</td>
<td>Testimony of husband and wife</td>
<td>70 603</td>
</tr>
<tr>
<td>§48-2A-9</td>
<td>Record keeping and reporting</td>
<td>70 603</td>
</tr>
<tr>
<td>§48-2A-10</td>
<td>Enforcement procedure for temporary and protective order</td>
<td>70 605</td>
</tr>
</tbody>
</table>

## ECONOMIC DEVELOPMENT:

### Division of Tourism and Parks

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5B-1-1</td>
<td>Short title</td>
<td>71 609</td>
</tr>
<tr>
<td>§5B-1-2</td>
<td>Legislative findings</td>
<td>71 609</td>
</tr>
<tr>
<td>§5B-1-4</td>
<td>Division created; appointment, compensation and qualifications of commissioner</td>
<td>71 610</td>
</tr>
<tr>
<td>§5B-1-5</td>
<td>General powers of the division</td>
<td>71 610</td>
</tr>
<tr>
<td>§5B-1-6</td>
<td>Sections created; continuation of civil service coverage for persons employed in the former department of commerce</td>
<td>71 612</td>
</tr>
<tr>
<td>§5B-1-6a</td>
<td>Program and policy action statement; submission to joint committee on government and finance</td>
<td>71 613</td>
</tr>
<tr>
<td>§5B-1-7</td>
<td>Section of tourism; purpose; powers and duties generally</td>
<td>71 613</td>
</tr>
<tr>
<td>§5B-1-8</td>
<td>Section of advertising and promotion; purpose; powers and duties generally</td>
<td>71 616</td>
</tr>
<tr>
<td>§5B-1-10</td>
<td>Section of sales and marketing; purpose; powers and duties generally</td>
<td>71 618</td>
</tr>
<tr>
<td>§5B-1-12</td>
<td>Section of parks and recreation created; duties, records and equipment previously transferred from the department of natural resources to the department of commerce; funds</td>
<td>71 619</td>
</tr>
<tr>
<td>§5B-1-12b</td>
<td>Conveyance of Grandview State Park to the National Park Service; governor, director of the division of natural resources and director of the division of</td>
<td>71 619</td>
</tr>
</tbody>
</table>
### ECONOMIC DEVELOPMENT—(continued):

#### Division of Tourism and Parks—(continued):

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5B-1-13. Section of parks and recreation; purpose; powers and duties</td>
<td>71,103</td>
</tr>
<tr>
<td>generally</td>
<td>621,810</td>
</tr>
<tr>
<td>§5B-1-15. Contracts for operation of commissaries, restaurants,</td>
<td>71,623</td>
</tr>
<tr>
<td>recreational facilities and other establishments limited to ten years’</td>
<td></td>
</tr>
<tr>
<td>duration; renewal at option of commissioner; termination of contract</td>
<td></td>
</tr>
<tr>
<td>by the commissioner; contracts for development of revenue producing</td>
<td></td>
</tr>
<tr>
<td>facilities within the state parks and recreational facilities; level</td>
<td></td>
</tr>
<tr>
<td>of investment of contracts; term of investment contract; reservation</td>
<td></td>
</tr>
<tr>
<td>of option to renew; and purchase of investment in event of default and</td>
<td></td>
</tr>
<tr>
<td>price determination upon such event.</td>
<td></td>
</tr>
<tr>
<td>§5B-1-16. Acquisition of former railroad subdivision for establishment</td>
<td>71,628</td>
</tr>
<tr>
<td>of Greenbrier River Trail; development, protection, operation and</td>
<td></td>
</tr>
<tr>
<td>maintenance of trail</td>
<td></td>
</tr>
<tr>
<td>§5B-1-17. Correlation of projects and services</td>
<td>71,629</td>
</tr>
<tr>
<td>§5B-1-18. Sunset provision</td>
<td>71,627</td>
</tr>
</tbody>
</table>

#### Office of Community and Industrial Development

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5B-2-2a. General powers of the office</td>
<td>71,632</td>
</tr>
<tr>
<td>§5B-2-3. Divisions created</td>
<td></td>
</tr>
</tbody>
</table>

#### West Virginia Economic Development Authority

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§31-15-6a. Special power of authority to transfer funds; limitations;</td>
<td>72,638</td>
</tr>
<tr>
<td>fund created; use of funds to provide customized job training program</td>
<td></td>
</tr>
<tr>
<td>by governor’s office of economic and community development</td>
<td></td>
</tr>
</tbody>
</table>

#### West Virginia Guaranteed Work Force Program

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5B-2D-1. Short title</td>
<td>71,633</td>
</tr>
<tr>
<td>§5B-2D-2. Definitions</td>
<td>71,633</td>
</tr>
<tr>
<td>§5B-2D-3. Training program</td>
<td>71,633</td>
</tr>
<tr>
<td>§5B-2D-4. Funds</td>
<td>71,634</td>
</tr>
<tr>
<td>§5B-2D-5. Program activities</td>
<td>71,635</td>
</tr>
<tr>
<td>§5B-2D-6. Reporting</td>
<td>71,636</td>
</tr>
<tr>
<td>§5B-2D-7. Marketing</td>
<td>71,637</td>
</tr>
</tbody>
</table>

#### EDUCATION:

#### Area Vocational Program

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§18-2B-2a. Withdrawal from multi-county vocational center prohibited</td>
<td>2,1557</td>
</tr>
</tbody>
</table>

#### Authority; Rights; Responsibility

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§18A-5-2. Holidays, closing of schools; time lost because of such;</td>
<td>73,643</td>
</tr>
<tr>
<td>special Saturday classes</td>
<td></td>
</tr>
</tbody>
</table>

#### Compulsory School Attendance

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§18-8-1. Commencement and termination of compulsory school attendance; exemption</td>
<td>2,1561</td>
</tr>
</tbody>
</table>

#### County Board of Education

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§18-5-13. Authority of boards generally</td>
<td>2,1557</td>
</tr>
<tr>
<td>§18-5-15. School term; exception; levies; ages of persons to whom schools are open</td>
<td>73,640</td>
</tr>
</tbody>
</table>

#### Definitions and Application of Chapter

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§29A-1-3. Application of chapter; limitations</td>
<td>74,645</td>
</tr>
</tbody>
</table>

#### Education of Exceptional Children

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§18-20-1. Establishment of special programs and teaching services for exceptional children</td>
<td>2,1578</td>
</tr>
<tr>
<td>§18-20-1b. Preschool programs for handicapped children; rules and regulations</td>
<td>2,1580</td>
</tr>
</tbody>
</table>

#### Governance

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§18B-1-11. Colleges and universities to provide appropriate</td>
<td>2,1588</td>
</tr>
<tr>
<td>services to meet needs of students with handicapping conditions</td>
<td></td>
</tr>
</tbody>
</table>
### EDUCATION—(continued):

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§29A-3A-1.</td>
<td>Definitions</td>
<td>74</td>
<td>646</td>
</tr>
<tr>
<td>§29A-3A-11a.</td>
<td>Additional powers and duties; subpoena powers</td>
<td>74</td>
<td>647</td>
</tr>
<tr>
<td>§18B-6-2.</td>
<td>Advisory councils of faculty</td>
<td>78</td>
<td>666</td>
</tr>
<tr>
<td>§18B-6-4.</td>
<td>Advisory councils of classified employees</td>
<td>78</td>
<td>667</td>
</tr>
<tr>
<td>§18-9A-4.</td>
<td>Foundation allowance for professional educators</td>
<td>2</td>
<td>1567</td>
</tr>
<tr>
<td>§18-9A-5.</td>
<td>Foundation allowance for service personnel</td>
<td>2</td>
<td>1569</td>
</tr>
<tr>
<td>§18-9A-5a.</td>
<td>Ratio of foundation allowances for professional educators and service personnel to net enrollment</td>
<td>2</td>
<td>1570</td>
</tr>
<tr>
<td>§18-9A-7.</td>
<td>Foundation allowance for transportation cost</td>
<td>2</td>
<td>1572</td>
</tr>
<tr>
<td>§18-9A-9.</td>
<td>Foundation allowance for other current expense and substitute employees</td>
<td>2</td>
<td>1573</td>
</tr>
<tr>
<td>§18-9A-10.</td>
<td>Foundation allowance to improve instructional programs</td>
<td>2</td>
<td>1574</td>
</tr>
<tr>
<td>§18-9A-13b.</td>
<td>Allowances for remedial and accelerated education programs and salary equity</td>
<td>2</td>
<td>1577</td>
</tr>
<tr>
<td>§18-2-5a.</td>
<td>Board rules to be filed with Legislature</td>
<td>74</td>
<td>645</td>
</tr>
<tr>
<td>§18-2-5b.</td>
<td>Medicaid eligible children</td>
<td>2</td>
<td>1556</td>
</tr>
<tr>
<td>§18A-4-1.</td>
<td>Definitions</td>
<td>76</td>
<td>658</td>
</tr>
<tr>
<td>§18A-4-5a.</td>
<td>County salary supplements for teachers</td>
<td>2</td>
<td>1583</td>
</tr>
<tr>
<td>§18A-4-5b.</td>
<td>County salary supplements for school service personnel</td>
<td>2</td>
<td>1585</td>
</tr>
<tr>
<td>§18A-4-5d.</td>
<td>1990 appropriation for salary equity</td>
<td>2</td>
<td>1587</td>
</tr>
<tr>
<td>§18A-4-7.</td>
<td>Substitute teachers pay</td>
<td>2</td>
<td>1587</td>
</tr>
<tr>
<td>§18A-4-9e.</td>
<td>Competency testing for service personnel</td>
<td>77</td>
<td>663</td>
</tr>
<tr>
<td>§18A-2-4.</td>
<td>Commercial driver's license for school personnel</td>
<td>75</td>
<td>657</td>
</tr>
<tr>
<td>§18A-2-7.</td>
<td>Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required</td>
<td>2</td>
<td>1581</td>
</tr>
</tbody>
</table>

### Salaries, Wages, and Other Benefits

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§29A-3B-1.</td>
<td>Definitions</td>
<td>74</td>
<td>649</td>
</tr>
<tr>
<td>§29A-3B-2.</td>
<td>Rules to be promulgated in accordance with this article</td>
<td>74</td>
<td>649</td>
</tr>
<tr>
<td>§29A-3B-3.</td>
<td>Rules of procedure required</td>
<td>74</td>
<td>649</td>
</tr>
<tr>
<td>§29A-3B-4.</td>
<td>Filing of proposed rules</td>
<td>74</td>
<td>650</td>
</tr>
<tr>
<td>§29A-3B-5.</td>
<td>Notice of proposed rule making</td>
<td>74</td>
<td>650</td>
</tr>
<tr>
<td>§29A-3B-6.</td>
<td>Filing findings and determinations for rules in state register; evidence deemed public record</td>
<td>74</td>
<td>651</td>
</tr>
<tr>
<td>§29A-3B-7.</td>
<td>Notice of hearings</td>
<td>74</td>
<td>652</td>
</tr>
<tr>
<td>§29A-3B-8.</td>
<td>Adoption of rules</td>
<td>74</td>
<td>652</td>
</tr>
</tbody>
</table>

### State Board of Education Rule Making

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§29A-3B-2.</td>
<td>Definitions</td>
<td>74</td>
<td>649</td>
</tr>
<tr>
<td>§29A-3B-3.</td>
<td>Rules of procedure required</td>
<td>74</td>
<td>649</td>
</tr>
<tr>
<td>§29A-3B-4.</td>
<td>Filing of proposed rules</td>
<td>74</td>
<td>650</td>
</tr>
<tr>
<td>§29A-3B-5.</td>
<td>Notice of proposed rule making</td>
<td>74</td>
<td>650</td>
</tr>
<tr>
<td>§29A-3B-6.</td>
<td>Filing findings and determinations for rules in state register; evidence deemed public record</td>
<td>74</td>
<td>651</td>
</tr>
<tr>
<td>§29A-3B-7.</td>
<td>Notice of hearings</td>
<td>74</td>
<td>652</td>
</tr>
</tbody>
</table>

### State Board of School Finance

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§18-9B-6a.</td>
<td>Delaying submission of budget</td>
<td>2</td>
<td>1578</td>
</tr>
</tbody>
</table>

### ELECTIONS:

**Circuit Courts: Circuit Judges**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§51-2-1.</td>
<td>Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court</td>
<td>79</td>
<td>677</td>
</tr>
</tbody>
</table>
**ELECTIONS—(continued):**

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§3-4A-2</td>
<td>80</td>
<td>680</td>
</tr>
<tr>
<td>§3-4A-9</td>
<td>80</td>
<td>682</td>
</tr>
<tr>
<td>§3-4A-10</td>
<td>80</td>
<td>684</td>
</tr>
<tr>
<td>§3-4A-10a</td>
<td>80</td>
<td>684</td>
</tr>
<tr>
<td>§3-4A-11a</td>
<td>80</td>
<td>685</td>
</tr>
<tr>
<td>§3-4A-12</td>
<td>79,80</td>
<td>671,686</td>
</tr>
<tr>
<td>§3-4A-13</td>
<td>80</td>
<td>689</td>
</tr>
<tr>
<td>§3-4A-15</td>
<td>80</td>
<td>690</td>
</tr>
<tr>
<td>§3-4A-16</td>
<td>80</td>
<td>691</td>
</tr>
<tr>
<td>§3-4A-17</td>
<td>80</td>
<td>692</td>
</tr>
<tr>
<td>§3-4A-19</td>
<td>80</td>
<td>693</td>
</tr>
<tr>
<td>§3-4A-19a</td>
<td>80</td>
<td>696</td>
</tr>
<tr>
<td>§3-4A-20</td>
<td>80</td>
<td>696</td>
</tr>
<tr>
<td>§3-4A-21</td>
<td>80</td>
<td>697</td>
</tr>
<tr>
<td>§3-4A-22</td>
<td>80</td>
<td>699</td>
</tr>
<tr>
<td>§3-4A-24</td>
<td>80</td>
<td>700</td>
</tr>
<tr>
<td>§3-4A-25</td>
<td>80</td>
<td>701</td>
</tr>
</tbody>
</table>

**Filling Vacancies**

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§3-10-3</td>
<td>79</td>
<td>676</td>
</tr>
</tbody>
</table>

**General Provisions and Definitions**

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§3-1-17</td>
<td>79</td>
<td>670</td>
</tr>
</tbody>
</table>

**Primary Elections and Nominating Procedures**

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§3-5-4</td>
<td>79</td>
<td>673</td>
</tr>
<tr>
<td>§3-5-7</td>
<td>79</td>
<td>674</td>
</tr>
</tbody>
</table>

**EMERGENCY SERVICES:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§15-5-2</td>
<td>7</td>
<td>1615</td>
</tr>
<tr>
<td>§15-5-4</td>
<td>7</td>
<td>1618</td>
</tr>
<tr>
<td>§15-5-4b</td>
<td>7</td>
<td>1620</td>
</tr>
<tr>
<td>§15-5-4c</td>
<td>7</td>
<td>1620</td>
</tr>
<tr>
<td>§15-5-20</td>
<td>7</td>
<td>1622</td>
</tr>
<tr>
<td>§15-5-23</td>
<td>7</td>
<td>1623</td>
</tr>
<tr>
<td>§15-5-24</td>
<td>7</td>
<td>1624</td>
</tr>
<tr>
<td>§15-5-25</td>
<td>7</td>
<td>1625</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Ch.</td>
</tr>
<tr>
<td>---------</td>
<td>------------------------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>§15-5-26</td>
<td>Tax exemption</td>
<td>7</td>
</tr>
<tr>
<td>§15-5-27</td>
<td>Annual report</td>
<td>7</td>
</tr>
<tr>
<td>§22-1-2</td>
<td>Declaration of legislative findings and policy</td>
<td>8</td>
</tr>
<tr>
<td>§22-1-5</td>
<td>Commissioner of energy; appointment; duties; qualifications; removal; salary; expenses; oath and bond</td>
<td>8</td>
</tr>
<tr>
<td>§22-1-7a</td>
<td>Advisory board</td>
<td>8</td>
</tr>
<tr>
<td>§54-3-1</td>
<td>Definitions</td>
<td>81</td>
</tr>
<tr>
<td>§5D-1-4</td>
<td>West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment</td>
<td>8</td>
</tr>
<tr>
<td>§5D-1-5</td>
<td>Powers, duties and responsibilities of authority generally</td>
<td>8</td>
</tr>
<tr>
<td>§5D-1-5a</td>
<td>Publication of notice of certain meetings</td>
<td>8</td>
</tr>
<tr>
<td>§5D-1-5b</td>
<td>Public hearing before final consideration of bond issue or exercise of right of eminent domain</td>
<td>8</td>
</tr>
<tr>
<td>§5D-1-9</td>
<td>Expenses of authority</td>
<td>8</td>
</tr>
<tr>
<td>§22-4-1</td>
<td>Appointment and organization of reclamation board of review; authority, compensation, expenses and removal of board members</td>
<td>8</td>
</tr>
<tr>
<td>§22-1-5a</td>
<td>Special revenue</td>
<td>82</td>
</tr>
<tr>
<td>§22A-3-11</td>
<td>Performance bonds; amount and method of bonding; bonding requirements, special reclamation tax and fund; prohibited acts; period of bond liability</td>
<td>82</td>
</tr>
<tr>
<td>§6B-2-3</td>
<td>Advisory opinions</td>
<td>83</td>
</tr>
<tr>
<td>§6B-2-4</td>
<td>Complaints; dismissals; hearings; disposition; judicial review</td>
<td>83</td>
</tr>
<tr>
<td>§6B-2-5</td>
<td>Ethical standards for elected and appointed officials and public employees</td>
<td>83</td>
</tr>
<tr>
<td>§6B-2-7</td>
<td>Financial disclosure statement; contents</td>
<td>83</td>
</tr>
<tr>
<td>§6B-2-8</td>
<td>Exceptions to financial disclosure requirements and conflicts of interest provisions</td>
<td>83</td>
</tr>
</tbody>
</table>
**EVIDENCE AND WITNESSES:**

**Competency of Witnesses**

§57-3-9. Communications to priests, nuns, clergymen, rabbis or other religious counselors not subject to being compelled as testimony.

**Miscellaneous Provisions**

§57-5-12. Certain documents deemed duplicates.

**FARM MANAGEMENT COMMISSION:**

Farm Management Commission

§19-12A-3. Farm management commission continued; composition; chairman; quorum; meetings; vacancies.


§19-12A-6. Appointment of farm management director; qualifications; powers and duties.

§19-12A-6a. Special revenue account.

§19-12A-8. Effect of management plan on employees.

**FAYETTE COUNTY:**

New River Gorge Bridge Day Commission

Bridge day commission created; terms of members; vacancies.

Office space and staff support; officers; meeting; reimbursement for expenses.

Commission powers; rules and regulations promulgated by the county commission.

Restriction on use of public highways.

Limitation of liability.

**FIRE PREVENTION:**

Fire Prevention and Control Act

§29-3-5b. Promulgation of rules, regulations and statewide building code.

§29-3-16b. Use of live trees in public buildings, exceptions.

Liquid Fuels and Lubricating Oils

§47-10-6a. Posting of the alcoholic content of gasoline.

**GEOLOGICAL SURVEY:**

Organization and Administration

§20-1-18d. United States geological survey continued and reestablished.

**HANCOCK COUNTY:**

Repeal of act requiring the county of Hancock to provide funds for certain monuments; marking certain graves; providing for a caretaker, bequests and endowments; providing a levy not to exceed two cents; and appointing a committee.

**HEALTH:**

Certificate of Need

§16-2D-2. Definitions.

§16-2D-4. Exemptions from certificate of need program.

§16-2D-5. Powers and duties of state health planning and development agency.

Health Care Records

§16-29-1. Copies of health care records to be furnished to patients.

§16-29-2. Reasonable expenses to be reimbursed.

Indigent Care

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

§16-29C-5. Effective date and termination date.
<table>
<thead>
<tr>
<th>Index</th>
<th>1777</th>
</tr>
</thead>
<tbody>
<tr>
<td>HEALTH—(continued):</td>
<td>Ch.</td>
</tr>
<tr>
<td><strong>Medical Power of Attorney</strong></td>
<td></td>
</tr>
<tr>
<td>§16-30A-1. Short title</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-2. Statement of purpose and legislative findings</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-3. Medical power of attorney</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-4. Powers of representative</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-5. Successor representative</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-6. Executing a medical power of attorney</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-7. Nomination of committee or guardian</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-8. Presumption of validity</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-9. Proof of continuance of medical power of attorney by affidavit</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-10. Protection of health care providers</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-11. Medical power of attorney to be made part of the medical records</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-12. Right to receive information regarding proposed health care; medical records</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-13. Revocation</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-14. Insurance; other laws</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-15. Preservation of existing rights</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-16. Prohibition</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-17. Reciprocity</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-19. Public education; guidelines for execution in health care facilities</td>
<td>97</td>
</tr>
<tr>
<td>§16-30A-20. Severability</td>
<td>97</td>
</tr>
<tr>
<td><strong>State Division of Health</strong></td>
<td></td>
</tr>
<tr>
<td>§16-1-10. Powers and duties of the director of health</td>
<td>91</td>
</tr>
<tr>
<td>§16-1-21. Fees for services; health services fund</td>
<td>92</td>
</tr>
<tr>
<td><strong>West Virginia Medical Practice Act</strong></td>
<td></td>
</tr>
<tr>
<td>§30-3-4. Definitions</td>
<td>98</td>
</tr>
<tr>
<td><strong>HOMESTEAD PROPERTY TAX EXEMPTION:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Homestead Property Tax Exemption</strong></td>
<td></td>
</tr>
<tr>
<td>§11-6B-2. Definitions</td>
<td>9</td>
</tr>
<tr>
<td>§11-6B-3. Twenty thousand dollar homestead exemption allowed</td>
<td>9</td>
</tr>
<tr>
<td>§11-6B-12. Effective date</td>
<td>9</td>
</tr>
<tr>
<td><strong>HORSE AND DOG RACING:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Horse and Dog Racing</strong></td>
<td></td>
</tr>
<tr>
<td>§19-23-6. Powers and authority of racing commission</td>
<td>99</td>
</tr>
<tr>
<td>§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools</td>
<td>100</td>
</tr>
<tr>
<td><strong>HUMAN SERVICES:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Miscellaneous Provisions</strong></td>
<td></td>
</tr>
<tr>
<td>§9-5-14. Medicaid program; health care facilities financed by bonds; rules regarding reimbursement of capital costs</td>
<td>101</td>
</tr>
<tr>
<td><strong>HUNTING AND FISHING:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Division of Commerce</strong></td>
<td></td>
</tr>
<tr>
<td>§5B-1-12a. Certain hunting and fishing areas prohibited from transfer</td>
<td>102</td>
</tr>
<tr>
<td>§5B-1-13. Division of parks and recreation; purpose; powers and duties generally</td>
<td>71,103</td>
</tr>
<tr>
<td><strong>Wildlife Resources</strong></td>
<td></td>
</tr>
<tr>
<td>§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees</td>
<td>104</td>
</tr>
<tr>
<td>§20-2-40b. Class A-1 small arms hunting license</td>
<td>105</td>
</tr>
<tr>
<td>§20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses</td>
<td>106</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>§33-15-4d</td>
<td>Third party reimbursement for rehabilitation services...</td>
</tr>
<tr>
<td>§33-34-1</td>
<td>Definitions</td>
</tr>
<tr>
<td>§33-34-2</td>
<td>Applicability</td>
</tr>
<tr>
<td>§33-34-3</td>
<td>Notice to comply with written requirements of commissioner, noncompliance and administrative supervision</td>
</tr>
<tr>
<td>§33-34-4</td>
<td>Confidentiality of certain proceedings and records</td>
</tr>
<tr>
<td>§33-34-5</td>
<td>Prohibited acts during periods of supervision</td>
</tr>
<tr>
<td>§33-34-6</td>
<td>Administrative election of proceedings</td>
</tr>
<tr>
<td>§33-34-7</td>
<td>Rules</td>
</tr>
<tr>
<td>§33-34-8</td>
<td>Meetings between the commissioner and the special deputy supervisor</td>
</tr>
<tr>
<td>§33-34-9</td>
<td>Special deputy supervisor appointed and expenses</td>
</tr>
<tr>
<td>§33-34-10</td>
<td>Immunity</td>
</tr>
<tr>
<td>§33-34-11</td>
<td>Severability</td>
</tr>
<tr>
<td>§33-12-2</td>
<td>Qualifications</td>
</tr>
<tr>
<td>§33-12-2a</td>
<td>Duty to receive continuing education; educational requirements, compliance; penalties</td>
</tr>
<tr>
<td>§33-12-6</td>
<td>Fees</td>
</tr>
<tr>
<td>§33-12-8a</td>
<td>Licensing of nonresident property casualty agents</td>
</tr>
<tr>
<td>§33-12-29</td>
<td>Change of address</td>
</tr>
<tr>
<td>§33-31-6</td>
<td>Corporate organization</td>
</tr>
<tr>
<td>§33-35-1</td>
<td>Definitions</td>
</tr>
<tr>
<td>§33-35-2</td>
<td>Duty to notify</td>
</tr>
<tr>
<td>§33-35-3</td>
<td>Penalty</td>
</tr>
<tr>
<td>§33-22-2</td>
<td>Applicability of other provisions</td>
</tr>
<tr>
<td>§33-23-2</td>
<td>Applicability of other provisions</td>
</tr>
<tr>
<td>§33-16-3h</td>
<td>Third party reimbursement for rehabilitation services...</td>
</tr>
<tr>
<td>§33-16A-14</td>
<td>Benefit levels; election to provide group coverage; notification of conversion privilege; policy delivered outside state</td>
</tr>
<tr>
<td>§33-14-7</td>
<td>Dependent coverage</td>
</tr>
<tr>
<td>§33-25-8b</td>
<td>Third party reimbursement for rehabilitation services...</td>
</tr>
<tr>
<td>§33-25-19</td>
<td>Administrative supervision</td>
</tr>
<tr>
<td>§33-25A-8b</td>
<td>Third party reimbursement for rehabilitation services...</td>
</tr>
<tr>
<td>§33-25A-30</td>
<td>Administrative supervision</td>
</tr>
<tr>
<td>§33-24-4</td>
<td>Exemptions; applicability of insurance laws</td>
</tr>
<tr>
<td>§33-24-7c</td>
<td>Third party reimbursement for rehabilitation services...</td>
</tr>
<tr>
<td>§33-24-14</td>
<td>Definitions</td>
</tr>
<tr>
<td>§33-24-15</td>
<td>Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy</td>
</tr>
<tr>
<td>§33-24-16</td>
<td>Commencement of delinquency proceedings</td>
</tr>
<tr>
<td>§33-24-17</td>
<td>Ex parte orders, injunctions and other orders</td>
</tr>
</tbody>
</table>
## INDEX

<table>
<thead>
<tr>
<th>INSURANCE—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospital Service Corporations. Medical Service Corporations—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§33-24-18. Grounds for rehabilitation of a corporation</td>
<td>110</td>
<td>856</td>
</tr>
<tr>
<td>§33-24-19. Grounds for liquidation</td>
<td>110</td>
<td>857</td>
</tr>
<tr>
<td>§33-24-20. Grounds for administrative supervision</td>
<td>110</td>
<td>857</td>
</tr>
<tr>
<td>§33-24-21. Order of rehabilitation</td>
<td>110</td>
<td>860</td>
</tr>
<tr>
<td>§33-24-22. Order of liquidation of corporation</td>
<td>110</td>
<td>861</td>
</tr>
<tr>
<td>§33-24-23. Conduct of delinquency proceedings against a corporation</td>
<td>110</td>
<td>861</td>
</tr>
<tr>
<td>§33-24-24. Claims of nonresidents against a corporation</td>
<td>110</td>
<td>863</td>
</tr>
<tr>
<td>§33-24-25. Proof of claims</td>
<td>110</td>
<td>863</td>
</tr>
<tr>
<td>§33-24-26. Priority of certain claims</td>
<td>110</td>
<td>865</td>
</tr>
<tr>
<td>§33-24-27. Order of distribution</td>
<td>110</td>
<td>865</td>
</tr>
<tr>
<td>§33-24-28. Attachment, garnishment or execution</td>
<td>110</td>
<td>867</td>
</tr>
<tr>
<td>§33-24-29. Deposit of moneys collected</td>
<td>110</td>
<td>867</td>
</tr>
<tr>
<td>§33-24-30. Exemption of commissioner from fees</td>
<td>110</td>
<td>867</td>
</tr>
<tr>
<td>§33-24-31. Borrowing on pledge of assets</td>
<td>110</td>
<td>868</td>
</tr>
<tr>
<td>§33-24-32. Date rights fixed on liquidation</td>
<td>110</td>
<td>868</td>
</tr>
<tr>
<td>§33-24-33. Voidable transfers</td>
<td>110</td>
<td>868</td>
</tr>
<tr>
<td>§33-24-34. Priority of claims for compensation</td>
<td>110</td>
<td>869</td>
</tr>
<tr>
<td>§33-24-35. Offsets</td>
<td>110</td>
<td>869</td>
</tr>
<tr>
<td>§33-24-36. Allowance of claims</td>
<td>110</td>
<td>870</td>
</tr>
<tr>
<td>§33-24-37. Time within which claims to be filed</td>
<td>110</td>
<td>873</td>
</tr>
<tr>
<td>§33-24-38. Assessment</td>
<td>110</td>
<td>874</td>
</tr>
<tr>
<td>§33-24-39. Creating preference among creditors; disbursement of assets</td>
<td>110</td>
<td>874</td>
</tr>
<tr>
<td>§33-24-40. Distribution of assets</td>
<td>110</td>
<td>875</td>
</tr>
<tr>
<td>§33-24-41. Unclaimed and withheld funds</td>
<td>110</td>
<td>875</td>
</tr>
<tr>
<td>§33-24-42. Immunity in receivership proceedings</td>
<td>110</td>
<td>875</td>
</tr>
<tr>
<td>Licensing, Fees and Taxation of Insurers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§33-3-5b. Capital and surplus requirements</td>
<td>108</td>
<td>820</td>
</tr>
<tr>
<td>§33-3-13. Fees and charges</td>
<td>109</td>
<td>821</td>
</tr>
<tr>
<td>§33-3-17. Minimum tax payable</td>
<td>108</td>
<td>821</td>
</tr>
<tr>
<td>Property Insurance Declination, Termination and Disclosure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§33-17A-1. Purpose of article</td>
<td>115</td>
<td>904</td>
</tr>
<tr>
<td>§33-17A-2. Scope of article</td>
<td>115</td>
<td>904</td>
</tr>
<tr>
<td>§33-17A-3. Definitions</td>
<td>115</td>
<td>905</td>
</tr>
<tr>
<td>§33-17A-4. Notification and reasons for a transfer, declination or termination</td>
<td>115</td>
<td>906</td>
</tr>
<tr>
<td>§33-17A-5. Permissible cancellations</td>
<td>115</td>
<td>907</td>
</tr>
<tr>
<td>§33-17A-6. Discriminatory terminations and declinations prohibited</td>
<td>115</td>
<td>908</td>
</tr>
<tr>
<td>§33-17A-7. Hearings and administrative procedure</td>
<td>115</td>
<td>909</td>
</tr>
<tr>
<td>§33-17A-8. Sanctions</td>
<td>115</td>
<td>909</td>
</tr>
<tr>
<td>§33-17A-9. Civil liability and actions</td>
<td>115</td>
<td>909</td>
</tr>
<tr>
<td>§33-17A-10. Immunity</td>
<td>115</td>
<td>910</td>
</tr>
<tr>
<td>§33-17A-11. Severability</td>
<td>115</td>
<td>910</td>
</tr>
<tr>
<td>Rates and Rating Organizations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§33-20-18. Reduction of premium charges for persons fifty-five years of age or older</td>
<td>116</td>
<td>911</td>
</tr>
<tr>
<td>Rehabilitation and Liquidation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§33-10-1. Definitions</td>
<td>110</td>
<td>828</td>
</tr>
<tr>
<td>§33-10-2. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy</td>
<td>110</td>
<td>830</td>
</tr>
<tr>
<td>§33-10-3. Commencement of delinquency proceedings</td>
<td>110</td>
<td>831</td>
</tr>
<tr>
<td>§33-10-4. Injunctions or other orders</td>
<td>110</td>
<td>833</td>
</tr>
<tr>
<td>§33-10-5. Grounds for rehabilitation of domestic insurers</td>
<td>110</td>
<td>834</td>
</tr>
<tr>
<td>§33-10-7. Grounds for conserving assets of foreign insurers</td>
<td>110</td>
<td>835</td>
</tr>
<tr>
<td>§33-10-8. Grounds for conserving assets of alien insurers</td>
<td>110</td>
<td>836</td>
</tr>
<tr>
<td>§33-10-10. Order of rehabilitation</td>
<td>110</td>
<td>836</td>
</tr>
<tr>
<td>§33-10-14. Conduct of delinquency proceedings against domestic or alien insurers</td>
<td>110</td>
<td>837</td>
</tr>
<tr>
<td>INSURANCE—(continued):</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Rehabilitation and Liquidation—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§33-10-18. Proof of claims</td>
<td>110</td>
<td>838</td>
</tr>
<tr>
<td>§33-10-19a. Priority of distribution</td>
<td>110</td>
<td>839</td>
</tr>
<tr>
<td>§33-10-21. Uniform Insurers Liquidation Act</td>
<td>110</td>
<td>841</td>
</tr>
<tr>
<td>§33-10-29. Allowance of certain claims</td>
<td>110</td>
<td>841</td>
</tr>
<tr>
<td>§33-10-36. Creating preference among creditors; disbursement of assets</td>
<td>110</td>
<td>844</td>
</tr>
<tr>
<td>§33-10-37. Distribution of assets</td>
<td>110</td>
<td>846</td>
</tr>
<tr>
<td>§33-10-38. Unclaimed and withheld funds</td>
<td>110</td>
<td>846</td>
</tr>
<tr>
<td>§33-10-39. Immunity in receivership proceedings and representation of the special deputy supervisor</td>
<td>110</td>
<td>847</td>
</tr>
<tr>
<td>Risk Retention Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§33-32-3. Chapter and license requirements for domestic groups</td>
<td>110</td>
<td>877</td>
</tr>
<tr>
<td>State Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§29-12-5c. Insurance for damages allegedly resulting from obstetric treatment of medicaid patients</td>
<td>107</td>
<td>817</td>
</tr>
<tr>
<td>JUVENILE OFFENDERS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home Detention Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§62-11B-1. Short title</td>
<td>118</td>
<td>914</td>
</tr>
<tr>
<td>§62-11B-2. Applicability</td>
<td>118</td>
<td>915</td>
</tr>
<tr>
<td>§62-11B-3. Definitions</td>
<td>118</td>
<td>915</td>
</tr>
<tr>
<td>§62-11B-4. Home detention; period of home detention; applicability</td>
<td>118</td>
<td>915</td>
</tr>
<tr>
<td>§62-11B-5. Requirements for order for home detention</td>
<td>118</td>
<td>916</td>
</tr>
<tr>
<td>§62-11B-6. Circumstances under which home detention may not be ordered</td>
<td>118</td>
<td>917</td>
</tr>
<tr>
<td>§62-11B-7. Home detention fees; special fund</td>
<td>118</td>
<td>917</td>
</tr>
<tr>
<td>§62-11B-8. Offender responsible for certain expenses</td>
<td>118</td>
<td>918</td>
</tr>
<tr>
<td>§62-11B-9. Violation of order of home confinement; procedures; penalties</td>
<td>118</td>
<td>918</td>
</tr>
<tr>
<td>§62-11B-10. Information to be provided law-enforcement agencies</td>
<td>118</td>
<td>919</td>
</tr>
<tr>
<td>LAW-ENFORCEMENT OFFICERS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil Service for Deputy Sheriffs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§7-14-15a. Additional part-time police work permitted</td>
<td>119</td>
<td>920</td>
</tr>
<tr>
<td>§7-14-17b. Sick leave for deputy sheriffs</td>
<td>68</td>
<td>596</td>
</tr>
<tr>
<td>§7-14-19a. Additional police work for deputy sheriffs in noncivil service counties</td>
<td>119</td>
<td>921</td>
</tr>
<tr>
<td>Law and Order; Police Force or Departments; Powers. Authority and Duties of Law-Enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§8-14-3. Powers, authority and duties of law-enforcement officials and policemen</td>
<td>119</td>
<td>921</td>
</tr>
<tr>
<td>LEGISLATIVE RULES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorization to Promulgate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agriculture</td>
<td>120</td>
<td>1016</td>
</tr>
<tr>
<td>Air Pollution Control Commission</td>
<td>120</td>
<td>930</td>
</tr>
<tr>
<td>Alcohol Beverage Control Commission</td>
<td>120</td>
<td>985</td>
</tr>
<tr>
<td>Archives and History</td>
<td>120</td>
<td>959</td>
</tr>
<tr>
<td>Athletic Commission</td>
<td>120</td>
<td>1019</td>
</tr>
<tr>
<td>Attorney General</td>
<td>120</td>
<td>1020</td>
</tr>
<tr>
<td>Auditor</td>
<td>120</td>
<td>1023</td>
</tr>
<tr>
<td>Banking</td>
<td>120</td>
<td>933</td>
</tr>
<tr>
<td>Barbers and Beauticians</td>
<td>120</td>
<td>1024</td>
</tr>
<tr>
<td>Beef Industry Self-Improvement Assessment Board</td>
<td>120</td>
<td>1026</td>
</tr>
<tr>
<td>Board of Investments</td>
<td>120</td>
<td>989</td>
</tr>
<tr>
<td>Board of Risk and Insurance</td>
<td>120</td>
<td>928</td>
</tr>
</tbody>
</table>
INDEX 1781

LEGISLATIVE RULES—(continued):

Authorization to Promulgate—(continued):

<table>
<thead>
<tr>
<th>Agency/Board/Commission</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chiropractic Examiners</td>
<td>120</td>
<td>1027</td>
</tr>
<tr>
<td>Commerce</td>
<td>120</td>
<td>934</td>
</tr>
<tr>
<td>Commercial Whitewater Advisory Board</td>
<td>120</td>
<td>1035</td>
</tr>
<tr>
<td>Corrections</td>
<td>120</td>
<td>981</td>
</tr>
<tr>
<td>Counseling</td>
<td>120</td>
<td>1027</td>
</tr>
<tr>
<td>Crime, Delinquency and Corrections</td>
<td>120</td>
<td>1027</td>
</tr>
<tr>
<td>Dental Examiners</td>
<td>120</td>
<td>1028</td>
</tr>
<tr>
<td>Economic Development Authority</td>
<td>120</td>
<td>958</td>
</tr>
<tr>
<td>Embalmers and Funeral Directors</td>
<td>120</td>
<td>1028</td>
</tr>
<tr>
<td>Employee Suggestion Award Board</td>
<td>120</td>
<td>925</td>
</tr>
<tr>
<td>Energy</td>
<td>120</td>
<td>937</td>
</tr>
<tr>
<td>Engineers, Professional</td>
<td>120</td>
<td>1028</td>
</tr>
<tr>
<td>Enterprise Zone Authority</td>
<td>120</td>
<td>943</td>
</tr>
<tr>
<td>Finance and Administration</td>
<td>120</td>
<td>937</td>
</tr>
<tr>
<td>Fire Commission</td>
<td>120</td>
<td>981</td>
</tr>
<tr>
<td>Health and Human Resources</td>
<td>120</td>
<td>964</td>
</tr>
<tr>
<td>Health Care Cost Review Authority</td>
<td>120</td>
<td>974</td>
</tr>
<tr>
<td>Health, Division and State Board of</td>
<td>120</td>
<td>965</td>
</tr>
<tr>
<td>Hearing-Aid Dealers</td>
<td>120</td>
<td>1029</td>
</tr>
<tr>
<td>Highways</td>
<td>120</td>
<td>1008</td>
</tr>
<tr>
<td>Hospital Finance Authority</td>
<td>120</td>
<td>976</td>
</tr>
<tr>
<td>Housing Development Fund</td>
<td>120</td>
<td>1029</td>
</tr>
<tr>
<td>Human Services, Director of Child Advocate Office</td>
<td>120</td>
<td>976</td>
</tr>
<tr>
<td>Industrial and Trade Jobs Development Corporation</td>
<td>120</td>
<td>944</td>
</tr>
<tr>
<td>Insurance Commissioner</td>
<td>120</td>
<td>988</td>
</tr>
<tr>
<td>Jail and Prison Standards Commission</td>
<td>120</td>
<td>983</td>
</tr>
<tr>
<td>Labor</td>
<td>120</td>
<td>944</td>
</tr>
<tr>
<td>Land Surveyors</td>
<td>120</td>
<td>1029</td>
</tr>
<tr>
<td>Library Commission</td>
<td>120</td>
<td>964</td>
</tr>
<tr>
<td>Lottery Commission</td>
<td>120</td>
<td>990</td>
</tr>
<tr>
<td>Medicine, Board of</td>
<td>120</td>
<td>1030</td>
</tr>
<tr>
<td>Motor Vehicles</td>
<td>120</td>
<td>1013</td>
</tr>
<tr>
<td>Natural Resources</td>
<td>120</td>
<td>946</td>
</tr>
<tr>
<td>Nurses, Licensed Practical</td>
<td>120</td>
<td>1032</td>
</tr>
<tr>
<td>Nurses, Registered Professional</td>
<td>120</td>
<td>1032</td>
</tr>
<tr>
<td>Nursing Home Administrators</td>
<td>120</td>
<td>1032</td>
</tr>
<tr>
<td>Personnel, Division of</td>
<td>120</td>
<td>926</td>
</tr>
<tr>
<td>Pharmacy, Board of</td>
<td>120</td>
<td>1033</td>
</tr>
<tr>
<td>Psychologists</td>
<td>120</td>
<td>1033</td>
</tr>
<tr>
<td>Public Employees Insurance Agency</td>
<td>120</td>
<td>926</td>
</tr>
<tr>
<td>Public Safety</td>
<td>120</td>
<td>985</td>
</tr>
<tr>
<td>Racing Commission</td>
<td>120</td>
<td>990</td>
</tr>
<tr>
<td>Radiologic Technology Board</td>
<td>120</td>
<td>1033</td>
</tr>
<tr>
<td>Real Estate Commission</td>
<td>120</td>
<td>1034</td>
</tr>
<tr>
<td>Secretary of State</td>
<td>120</td>
<td>1034</td>
</tr>
<tr>
<td>Structural Barriers Compliance Board</td>
<td>120</td>
<td>1035</td>
</tr>
<tr>
<td>Tax Department</td>
<td>120</td>
<td>994</td>
</tr>
<tr>
<td>Teachers Retirement Board</td>
<td>120</td>
<td>929</td>
</tr>
<tr>
<td>Treasurer</td>
<td>120</td>
<td>1036</td>
</tr>
<tr>
<td>Water Development Authority</td>
<td>120</td>
<td>955</td>
</tr>
<tr>
<td>Water Resources Board</td>
<td>120</td>
<td>956</td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>120</td>
<td>978</td>
</tr>
<tr>
<td>Effective date of rules</td>
<td>120</td>
<td>924</td>
</tr>
<tr>
<td>Technical deficiencies waived</td>
<td>120</td>
<td>925</td>
</tr>
</tbody>
</table>

LEGISLATURE:

Joint Committee on Government and Finance

§4-3-5. Charges for use of the Legislature’s computer subscriber system... 122 1037
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1782</td>
<td>INDEX</td>
</tr>
</tbody>
</table>

**LEGISLATURE—(continued):**

Next Meeting of the Senate

§4-1-22. "Next meeting of the Senate" defined

121 1036

**LIENS:**

Vendor’s and Trust Deed Liens

§38-1-14. Future advances secured by credit line deed of trust; definitions; notice requirements and form; priority over other liens; release

123 1038

**LOCAL POWERS ACT:**

Fees and Expenditures for County Development

§7-20-1. Short title

124 1042

§7-20-2. Purpose and findings

124 1042

§7-20-3. Definitions

124 1043

§7-20-4. Counties authorized to collect fees

124 1045

§7-20-5. Credits or offsets to be adjusted; incidental benefit by one development not construed as denying reasonable benefit to new development

124 1046

§7-20-6. Criteria and requirements necessary to implement collection of fees

124 1046

§7-20-7. Establishment of impact fees; levies may be used to fund existing capital improvements

124 1048

§7-20-8. Use and administration of impact fees

124 1051

§7-20-9. Refund of unexpended impact fees

124 1052

§7-20-10. Impact fees required to be consistent with other development regulations

124 1053

**LOTTERY:**

State Lottery Act

§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems

125 1054

§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond

125 1057

§29-22-13. Prohibited acts; conflict of interest; prohibited gifts and gratuities

125 1059

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits

125 1060

§29-22-19. Post audit of accounts and transactions of office

125 1063

§29-22-20. Monthly and annual reports

125 1063

§29-22-21. Officials who may appear at lottery drawing

125 1064
<table>
<thead>
<tr>
<th>INDEX</th>
<th>1783</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MENTALLY ILL PERSONS:</strong></td>
<td>Ch.</td>
</tr>
<tr>
<td>Committee; Disposition of Property</td>
<td></td>
</tr>
<tr>
<td>§27-11-1. Appointment of committees; hearing; appointment of</td>
<td></td>
</tr>
<tr>
<td>guardian ad litem; certification of incompetency;</td>
<td></td>
</tr>
<tr>
<td>appeal; habeas corpus</td>
<td></td>
</tr>
<tr>
<td><strong>MERCER COUNTY:</strong></td>
<td></td>
</tr>
<tr>
<td>Tourist Train Authority</td>
<td></td>
</tr>
<tr>
<td>Tourist train authority; powers and pilot project</td>
<td></td>
</tr>
<tr>
<td><strong>MORGAN COUNTY:</strong></td>
<td></td>
</tr>
<tr>
<td>War Memorial Hospital to the Veterans of the World Wars from</td>
<td></td>
</tr>
<tr>
<td>Morgan County</td>
<td></td>
</tr>
<tr>
<td><strong>MOTOR VEHICLES:</strong></td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
</tr>
<tr>
<td>§17C-15-48. Alteration of suspension system</td>
<td></td>
</tr>
<tr>
<td>Fees for Registration, Licensing, Etc.</td>
<td></td>
</tr>
<tr>
<td>§17A-10-3. Registration fees for vehicles equipped with pneumatic</td>
<td></td>
</tr>
<tr>
<td>tires</td>
<td></td>
</tr>
<tr>
<td>§17A-10-3b. Motorcycle safety fee</td>
<td></td>
</tr>
<tr>
<td>Issuance of License, Expiration and Renewal</td>
<td></td>
</tr>
<tr>
<td>§17B-2-1. Drivers must be licensed; chauffeur licensee need not</td>
<td></td>
</tr>
<tr>
<td>procure driver license; licensees need not obtain local</td>
<td></td>
</tr>
<tr>
<td>government license; motorcycle driver license</td>
<td></td>
</tr>
<tr>
<td>§17B-2-5. Qualifications, issuance and fee for instruction permits</td>
<td></td>
</tr>
<tr>
<td>§17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle</td>
<td></td>
</tr>
<tr>
<td>§17B-2-7c. Motorcycle license examination fund</td>
<td></td>
</tr>
<tr>
<td>§17B-2-8. Issuance and contents of licenses; fees</td>
<td></td>
</tr>
<tr>
<td>§17B-2-12. Expiration of licenses; renewal; renewal fees</td>
<td></td>
</tr>
<tr>
<td>License Services</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-1. License certificate required; application</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-2. Applicant must be bonded</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-3. Fee required for license certificate; special fund created</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-4. Investigation prior to issuance of license certificate; information confidential</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-5. Refusal of license certificate</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-6. When application to be made; expiration of license certificate; renewal</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-7. Form and display of license certificate; certified copies of license</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-8. Changes in business; action required</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-9. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-10. Temporary registration plates or markers</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-11. Inspections; violations and penalties</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-12. Injunctive relief</td>
<td></td>
</tr>
<tr>
<td>§17A-6B-13. Promulgation of rules</td>
<td></td>
</tr>
<tr>
<td>Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, Etc.</td>
<td></td>
</tr>
<tr>
<td>§17A-6-1. Definitions</td>
<td></td>
</tr>
<tr>
<td>§17A-6-1a. Unlawful to be an automobile broker; definition; criminal penalties</td>
<td></td>
</tr>
<tr>
<td>§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential</td>
<td></td>
</tr>
<tr>
<td>MOTOR VEHICLES—(continued):</td>
<td>Ch.</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Licensing of Dealers and Wreckers or Dismantlers: Special Plates: Temporary Plates or Markers, Etc.—(continued):</td>
<td></td>
</tr>
<tr>
<td>§17A-6-5. License certificate exemption</td>
<td>129</td>
</tr>
<tr>
<td>§17A-6-10. Fee required for license certificate; dealer special plates</td>
<td>129</td>
</tr>
<tr>
<td>§17A-6-15. Temporary registration plates or markers</td>
<td>129</td>
</tr>
<tr>
<td>Motorcycle Safety Education</td>
<td></td>
</tr>
<tr>
<td>§17B-1D-1. Legislative findings</td>
<td>134</td>
</tr>
<tr>
<td>§17B-1D-2. Program established</td>
<td>134</td>
</tr>
<tr>
<td>§17B-1D-3. Rider training</td>
<td>134</td>
</tr>
<tr>
<td>§17B-1D-4. Instructor training and qualification</td>
<td>134</td>
</tr>
<tr>
<td>§17B-1D-5. Program implementation</td>
<td>134</td>
</tr>
<tr>
<td>§17B-1D-6. Exemption from motorcycle license examination</td>
<td>134</td>
</tr>
<tr>
<td>§17B-1D-7. Motorcycle safety account</td>
<td>134</td>
</tr>
<tr>
<td>§17B-1D-8. Authority for regulations</td>
<td>134</td>
</tr>
<tr>
<td>§17B-1D-9. Effective date</td>
<td>134</td>
</tr>
<tr>
<td>Motor Vehicle Dealers, Distributors, Wholesalers and Manufacturers</td>
<td></td>
</tr>
<tr>
<td>§17A-6A-8a. Compensation to dealers for service rendered</td>
<td>131</td>
</tr>
<tr>
<td>Original and Renewal of Registration: Issuance of Certificates of Title</td>
<td></td>
</tr>
<tr>
<td>§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing</td>
<td>127</td>
</tr>
<tr>
<td>§17A-3-14. Registration plates generally</td>
<td>128</td>
</tr>
<tr>
<td>Security Upon Motor Vehicles</td>
<td></td>
</tr>
<tr>
<td>§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term</td>
<td>137</td>
</tr>
<tr>
<td>§17D-2A-7. Suspension or revocation of license, registration; reinstatement</td>
<td>137</td>
</tr>
<tr>
<td>Special Antitheft Laws</td>
<td></td>
</tr>
<tr>
<td>§17A-8-9. Theft of a rental vehicle; penalty</td>
<td>132</td>
</tr>
<tr>
<td>§17A-8-13. Theft of a motor vehicle offered for sale which had been obtained for temporary use for demonstration purposes; penalty</td>
<td>133</td>
</tr>
<tr>
<td>Special Stops Required</td>
<td></td>
</tr>
<tr>
<td>§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; removal of warning lights, lettering, etc., upon sale of buses; highways with separate roadways</td>
<td>135</td>
</tr>
<tr>
<td>Transfers of Title or Interest</td>
<td></td>
</tr>
<tr>
<td>§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty</td>
<td>129</td>
</tr>
<tr>
<td>Words and Phrases Defined</td>
<td></td>
</tr>
<tr>
<td>§17B-1-1. Definitions</td>
<td>134</td>
</tr>
<tr>
<td>Writs, Process and Order of Publication</td>
<td></td>
</tr>
<tr>
<td>§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of secretary of state, insurance company, as agents; service of process</td>
<td>138</td>
</tr>
</tbody>
</table>

**MUNICIPALITIES:**

Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health; Enforcement of Duty to Pay for Service

§8-18-23. Authority to require discontinuance of water service by provider utility for nonpayment of sewer service rates and charges; lien for delinquent service rates and charges; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.... 140 1145
<table>
<thead>
<tr>
<th>INDEX</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>MUNICIPALITIES—(continued):</td>
<td></td>
</tr>
<tr>
<td>Combined Waterworks and Sewerage Systems</td>
<td></td>
</tr>
<tr>
<td>§8-20. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure</td>
<td></td>
</tr>
<tr>
<td>General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits Against Municipalities</td>
<td></td>
</tr>
<tr>
<td>§1. Repeal of article relating to notice of suit against municipalities</td>
<td></td>
</tr>
<tr>
<td>Municipal and County Waterworks and Electric Power Systems</td>
<td></td>
</tr>
<tr>
<td>§8-19-1. Acquisition and operation of municipal and county waterworks and electric power systems; construction of improvements to municipal and county electric power systems; extension beyond corporate limits; definitions</td>
<td></td>
</tr>
<tr>
<td>§8-19-3. Right of eminent domain; limitations</td>
<td></td>
</tr>
<tr>
<td>§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation</td>
<td></td>
</tr>
<tr>
<td>§8-19-5. Publication of abstract of ordinance or order and notice; hearing</td>
<td></td>
</tr>
<tr>
<td>§8-19-6. Amount, negotiability and execution of bonds</td>
<td></td>
</tr>
<tr>
<td>§8-19-7. Bonds payable solely from revenues; not to constitute municipal or county indebtedness</td>
<td></td>
</tr>
<tr>
<td>§8-19-8. Lien on bondholders; deeds of trust; security agreements; priority of liens</td>
<td></td>
</tr>
<tr>
<td>§8-19-9. Covenants with bondholders</td>
<td></td>
</tr>
<tr>
<td>§8-19-10. Operating contract</td>
<td></td>
</tr>
<tr>
<td>§8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus</td>
<td></td>
</tr>
<tr>
<td>§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus</td>
<td></td>
</tr>
<tr>
<td>§8-19-12a. Lien for delinquent service rates and charges; notice of delinquency; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure</td>
<td></td>
</tr>
<tr>
<td>§8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges</td>
<td></td>
</tr>
<tr>
<td>§8-19-14. Bonds for additions, betterments and improvements</td>
<td></td>
</tr>
<tr>
<td>§8-19-15. System of accounts; audit</td>
<td></td>
</tr>
<tr>
<td>§8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership</td>
<td></td>
</tr>
<tr>
<td>§8-19-17. Grants, loans, advances and agreements</td>
<td></td>
</tr>
<tr>
<td>§8-19-18. Additional and alternative method for constructing or improving waterworks or electric power system; cumulative authority</td>
<td></td>
</tr>
<tr>
<td>§8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system</td>
<td></td>
</tr>
<tr>
<td>§8-19-20. Article to be liberally construed</td>
<td></td>
</tr>
<tr>
<td>Municipal Waterworks and Electric Power Systems</td>
<td></td>
</tr>
<tr>
<td>§8-19-12a. Lien for delinquent service rates and charges; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure</td>
<td></td>
</tr>
<tr>
<td>NATIONAL GUARD:</td>
<td></td>
</tr>
<tr>
<td>National Guard</td>
<td></td>
</tr>
<tr>
<td>§15-1B-23. American flag for burial of deceased members of the national guard; presentation of flag to parent or spouse</td>
<td></td>
</tr>
</tbody>
</table>
### NATURAL RESOURCES:

**Equestrian Activities Responsibility Act**

- **§20-4-1. Legislative purpose** ................................................................. 145 1187
- **§20-4-2. Definitions** .................................................................................. 145 1187
- **§20-4-3. Duties of horsemen** ..................................................................... 145 1188
- **§20-4-4. Duties of participants** ................................................................. 145 1189
- **§20-4-5. Liability of horsemen** ................................................................. 145 1190
- **§20-4-6. Liability of participants** .............................................................. 145 1191
- **§20-4-7. Applicability of article** ............................................................... 145 1191

**Interstate Wildlife Violator Compact**

- **§20-2C-1. Governor's authority to execute** ............................................... 144 1176
- **§20-2C-2. When and how compact becomes operative** ............................. 144 1186
- **§20-2C-3. Compensation and expenses of compact administrator** ............ 144 1186

**Real Estate Management and Procedures**

- **§20-1A-4. Public land corporation to conduct sales of public lands by competitive bidding, modified competitive bidding or direct sale** .................................................. 143 1174

**Water Pollution Control Act**

- **§20-5A-2. Definitions** ............................................................................... 146 1191

**West Virginia Underground Storage Tank Act**

- **§20-5H-6. Promulgation of rules, regulations and standards by director** .... 147 1195
- **§20-5H-22. Underground storage tank insurance fund** ............................... 147 1197

**Wildlife Resources**

- **§20-2-57. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty** ................................................................. 148 1198

### PRISONERS:

**The Governor**

- **§5-1-12. How costs paid; complainant responsible for** .............................. 149 1200

### PROFESSIONS AND OCCUPATIONS:

**Architects**

- **§30-12-1. Board of architects** .................................................................... 152 1207
- **§30-12-2. Definitions** .................................................................................. 152 1208
- **§30-12-3. Fees** ........................................................................................... 152 1209
- **§30-12-4. Registration qualifications** ............................................................ 152 1209
- **§30-12-5. Registration renewal** ................................................................... 152 1210
- **§30-12-6. Certificate of registration** .............................................................. 152 1210
- **§30-12-7. Seal** ............................................................................................. 152 1211
- **§30-12-8. Disciplinary powers** .................................................................... 152 1211
- **§30-12-9. Disciplinary proceedings** ............................................................. 152 1212
- **§30-12-10. Registration; prima facie evidence** ........................................... 152 1212
- **§30-12-11. Prohibition** .................................................................................. 152 1213
- **§30-12-11a. Construction administration services required** ....................... 152 1213
- **§30-12-12. Exceptions** ................................................................................ 152 1215
- **§30-12-13. Enforcement** .............................................................................. 152 1216
- **§30-12-14. Penalties** .................................................................................. 152 1217

**Hearing-Aid Dealers and Fitters**

- **§30-26-3. West Virginia board of hearing-aid dealers created; membership; qualifications; term; oath; salary and expenses; powers and duties** ............................................ 153 1218
- **§30-26-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto** ........................................................... 153 1220
- **§30-26-7. Results of examination disclosed to applicant; issuance of license; fees** .................................................................................................................. 153 1221
- **§30-26-9. Renewal of license** ..................................................................... 153 1222
- **§30-26-12. Temporary trainee permits** ..................................................... 153 1222
<table>
<thead>
<tr>
<th>PROFESSIONS AND OCCUPATIONS—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervision of Electricians</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal.</td>
<td>150</td>
<td>1201</td>
</tr>
</tbody>
</table>

| West Virginia Medical Practice Act      |     |      |
| §30-3-9. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges. | 151 | 1203 |

<table>
<thead>
<tr>
<th>PUBLIC DEFENDER:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Defender Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§29-21-2. Definitions.</td>
<td>154</td>
<td>1224</td>
</tr>
<tr>
<td>§29-21-5. Executive director.</td>
<td>154</td>
<td>1226</td>
</tr>
<tr>
<td>§29-21-6. Powers, duties and limitations.</td>
<td>154</td>
<td>1226</td>
</tr>
<tr>
<td>§29-21-7. Criminal law research center established; functions.</td>
<td>154</td>
<td>1228</td>
</tr>
<tr>
<td>§29-21-8. Public defender corporations.</td>
<td>154</td>
<td>1229</td>
</tr>
<tr>
<td>§29-21-9. Panel attorneys.</td>
<td>154</td>
<td>1229</td>
</tr>
<tr>
<td>§29-21-10. Public defender corporations—Intent to apply for funding.</td>
<td>154</td>
<td>1230</td>
</tr>
<tr>
<td>§29-21-11. Public defender corporations—Funding applications; legal representation plans; review.</td>
<td>154</td>
<td>1231</td>
</tr>
<tr>
<td>§29-21-12. Public defender corporation funding applications.</td>
<td>154</td>
<td>1232</td>
</tr>
<tr>
<td>§29-21-13. Approval of public defender corporation funding applications; funding; record keeping by public defender corporations.</td>
<td>154</td>
<td>1233</td>
</tr>
<tr>
<td>§29-21-13a. Compensation and expenses for panel attorneys.</td>
<td>154</td>
<td>1233</td>
</tr>
<tr>
<td>§29-21-15. Public defender corporations—Board of directors.</td>
<td>154</td>
<td>1236</td>
</tr>
<tr>
<td>§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.</td>
<td>154</td>
<td>1237</td>
</tr>
<tr>
<td>§29-21-17. Private practice of law by public defenders.</td>
<td>154</td>
<td>1242</td>
</tr>
<tr>
<td>§29-21-19. Audits.</td>
<td>154</td>
<td>1243</td>
</tr>
<tr>
<td>§29-21-21. Forgiveness of loans; reversion of public defender corporation assets.</td>
<td>154</td>
<td>1244</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PUBLIC LIBRARIES:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Libraries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§10-1-14. Powers and duties.</td>
<td>155</td>
<td>1245</td>
</tr>
<tr>
<td>§10-1-22. Confidential nature of certain library records.</td>
<td>156</td>
<td>1246</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PUBLIC SAFETY:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Division of Public Safety</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.</td>
<td>157</td>
<td>1247</td>
</tr>
<tr>
<td>§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.</td>
<td>157</td>
<td>1248</td>
</tr>
<tr>
<td>§15-2-12. Mission of the division; powers of superintendent, officers and members; patrol of turnpike.</td>
<td>158</td>
<td>1252</td>
</tr>
<tr>
<td>§15-2-25. Rules and regulations generally; carrying of weapons upon retirement or medical discharge.</td>
<td>159</td>
<td>1256</td>
</tr>
<tr>
<td>§15-2-43. Awarding service revolver upon retirement.</td>
<td>160</td>
<td>1258</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PUBLIC SERVICE COMMISSION:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Emergency Telephone System</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§24-6-2. Definitions.</td>
<td>163</td>
<td>1266</td>
</tr>
<tr>
<td>§24-6-3. Adoption of emergency telephone system plan.</td>
<td>163</td>
<td>1267</td>
</tr>
</tbody>
</table>
## PUBLIC SERVICE COMMISSION—(continued):

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§24-2-3c</td>
<td>Cessation of jurisdiction over rates for certain services subject to competition.</td>
<td>161</td>
</tr>
<tr>
<td>§24-2-4b</td>
<td>Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.</td>
<td>162</td>
</tr>
</tbody>
</table>

## PUTNAM COUNTY:

Extending time for Putnam County Commission to meet as levying body for election to continue additional levy for parks, recreation and library services. | 196  |

## RAFFLES:

Charitable Raffles

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§47-21-2</td>
<td>Definitions</td>
<td>164</td>
</tr>
<tr>
<td>§47-21-7</td>
<td>License fee and exemption from taxes.</td>
<td>164</td>
</tr>
</tbody>
</table>

## REAL PROPERTY:

Real Estate Appraiser Licensing and Certification Act

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§37-14-1</td>
<td>Short title</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-2</td>
<td>Definitions</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-3</td>
<td>Real estate appraiser license required.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-4</td>
<td>Exceptions to license requirement.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-5</td>
<td>Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members are disqualified from participation; compensation; records; office space; personnel.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-6</td>
<td>General powers and duties.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-7</td>
<td>Hearings and orders; entry of order without notice and hearing.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-8</td>
<td>Judicial review; appeals to supreme court of appeals.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-9</td>
<td>Applications for license.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-10</td>
<td>Scope of real estate appraiser license.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-11</td>
<td>Qualifications for license.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-12</td>
<td>Courses of study.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-13</td>
<td>Term of license.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-14</td>
<td>Continuing education.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-15</td>
<td>Renewal of license.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-16</td>
<td>Complaints and investigations relating to real estate appraiser licenses.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-17</td>
<td>Professional corporations.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-18</td>
<td>Collection of appraisal fees.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-19</td>
<td>Penalties.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-20</td>
<td>Waiver of license qualification requirements.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-21</td>
<td>Special waiver of license qualification requirements.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-22</td>
<td>Standards of professional appraisal practice.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-23</td>
<td>Prohibited acts and omissions—Licensees.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-24</td>
<td>Classification of service.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-25</td>
<td>Contingent fees.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-26</td>
<td>State certified real estate appraiser; use of term.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-27</td>
<td>Certification application.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-28</td>
<td>Classes of certification.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-29</td>
<td>Experience requirement.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-30</td>
<td>Education requirement.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-31</td>
<td>Examination required.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-32</td>
<td>Term of certification.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-33</td>
<td>Renewal of certification.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-34</td>
<td>Basis for denial.</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-35</td>
<td>Use of term &quot;state certified real estate appraiser.&quot;</td>
<td>165</td>
</tr>
<tr>
<td>§37-14-36</td>
<td>Continuing education requirement.</td>
<td>165</td>
</tr>
</tbody>
</table>
## REAL PROPERTY—(continued):

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§37-14-37.</td>
<td>Prohibited acts and omissions—State certified real estate appraiser...</td>
<td>165</td>
<td>1298</td>
</tr>
<tr>
<td>§37-14-38.</td>
<td>Disciplinary proceedings...</td>
<td>165</td>
<td>1298</td>
</tr>
<tr>
<td>§37-14-39.</td>
<td>Hearing and judicial review...</td>
<td>165</td>
<td>1299</td>
</tr>
<tr>
<td>§37-14-40.</td>
<td>Licensing and certification fees...</td>
<td>165</td>
<td>1300</td>
</tr>
<tr>
<td>§37-14-41.</td>
<td>Licenses, certificates and related records...</td>
<td>165</td>
<td>1301</td>
</tr>
<tr>
<td>§37-14-42.</td>
<td>Roster of licensed appraisers and certified appraisers...</td>
<td>165</td>
<td>1302</td>
</tr>
<tr>
<td>§37-14-43.</td>
<td>Certificate of good standing...</td>
<td>165</td>
<td>1302</td>
</tr>
<tr>
<td>§37-14-44.</td>
<td>Licensure and certification of nonresidents...</td>
<td>165</td>
<td>1304</td>
</tr>
</tbody>
</table>

## REGULATION OF TRADE:

Bedding and Upholstery Business

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§47-1A-14.</td>
<td>Annual registration fees...</td>
<td>166</td>
<td>1305</td>
</tr>
</tbody>
</table>

## RESOLUTIONS:

### Concurrent

- HCR 1, Raising a Joint Assembly to hear an address by His Excellency, the Governor... | 1539 |
- HCR 21, Urging the West Virginia Congressional Delegation to continue its efforts to have the Federal Bureau of Investigation relocate its Identification Division to West Virginia and urging the Governor of West Virginia to assist the delegation in its efforts... | 1539 |
- HCR 40, Requesting the Joint Committee on Government and Finance to establish an interim committee to review, examine and study matters related to solid and toxic waste management... | 1540 |
- SCR 19, Establishing a West Virginia health care delivery and accessibility task force and directing said task force to report to the Legislature... | 1541 |
- SCR 30, Relating to approving the purpose and amount of certain projects of the West Virginia Regional Jail and Correctional Facilities Authority... | 1543 |

### House

- HR 19, Amending the Rules of the House of Delegates relating to prohibiting smoking and the use of all other tobacco products in the House of Delegates Chamber, galleries and in House committee rooms during meetings... | 1547 |

### Senate

- SR 3, Amending Senate Rule No. 27, relating to the appointment of standing committees... | 1547 |
- SR 13, Amending the rules of the Senate, relating to defining "next meeting of the Senate" for the purpose of confirmations... | 1548 |

## RETIREMENT:

### Public Employees Retirement Act

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5-10-19.</td>
<td>Employers to file information as to employees' service...</td>
<td>10</td>
<td>1651</td>
</tr>
<tr>
<td>§5-10-22c.</td>
<td>Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates...</td>
<td>10</td>
<td>1652</td>
</tr>
<tr>
<td>§5-10-54.</td>
<td>Termination of benefits; procedure...</td>
<td>10</td>
<td>1658</td>
</tr>
</tbody>
</table>

### Retirement Benefits Generally: Policemen's Pension and Relief Fund; Firemen's Pension and Relief Fund; Pension Plans for Employees of Waterworks System, Sewerage System or Combined Waterworks and Sewerage System

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§8-22-13.</td>
<td>Reports by board of trustees...</td>
<td>167</td>
<td>1306</td>
</tr>
</tbody>
</table>
### RETIREMENT—(continued):

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retirement Benefits Generally; Policemen's Pension and Relief Fund; Firemen's Pension and Relief Fund; Pension Plans for Employees of Waterworks System, Sewerage System or Combined Waterworks and Sewerage System—(continued): §8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction</td>
<td>167</td>
</tr>
</tbody>
</table>

### SMALL BUSINESS ASSISTANCE:

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Business Expansion Assistance Program §5B-6-1. Legislative purpose</td>
<td>168</td>
</tr>
<tr>
<td>§5B-6-2. Definitions</td>
<td>168</td>
</tr>
<tr>
<td>§5B-6-3. Small business expansion assistance program</td>
<td>168</td>
</tr>
<tr>
<td>§5B-6-4. Application</td>
<td>168</td>
</tr>
<tr>
<td>§5B-6-5. Certification; reimbursement</td>
<td>168</td>
</tr>
</tbody>
</table>

### SOLID WASTE:

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>County and Regional Solid Waste Authorities §20-9-1. Legislative findings and purposes</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-2. Definitions</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-7. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-10a. Bonds and notes</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-10b. Items included in cost of properties</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-10c. Bonds or notes may be secured by trust indenture</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-10d. Sinking fund for bonds or notes</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-10e. Collection, etc., of revenues and funds and enforcement of covenants; default; suit, etc., by bondholder or noteholder or trustee to compel performance of duties; appointment and powers of receiver</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-10f. Operating contracts</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-10g. Statutory mortgage lien created unless otherwise provided; foreclosure thereof</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-10h. Refunding bonds or notes</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-10i. Indebtedness of authority</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-10j. Property, bonds or notes and obligations of authority exempt from taxation</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-12. Powers, duties and responsibilities of authority generally</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by West Virginia state solid waste management board; effect on facility siting; public hearings; rules and regulations</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-12b. Interim siting approval for commercial solid waste facilities</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-12c. Approval of establishment or continuation of Class A facility by county commission and/or referendum</td>
<td>169</td>
</tr>
<tr>
<td>§20-9-12d. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties</td>
<td>169</td>
</tr>
</tbody>
</table>

### Fiscal Affairs

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§7-5-22. County solid waste assessment fees authorized</td>
<td>169</td>
</tr>
</tbody>
</table>

### Solid Waste Management Act

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§20-5F-1. Purpose and legislative findings</td>
<td>169</td>
</tr>
<tr>
<td>§20-5F-2. Definitions</td>
<td>169</td>
</tr>
<tr>
<td>§20-5F-4a. Certificate for site approval required for certain solid waste disposal facilities; fee required</td>
<td>169</td>
</tr>
<tr>
<td>§20-5F-4b. Special provision for residential solid waste disposal</td>
<td>169</td>
</tr>
<tr>
<td>§20-5F-5. Prohibitions; permits required; priority of disposal</td>
<td>169</td>
</tr>
<tr>
<td>§20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability</td>
<td>169</td>
</tr>
<tr>
<td>§20-5F-5c. Pre-siting notice</td>
<td>169</td>
</tr>
</tbody>
</table>

### West Virginia Recycling Program

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§20-11-5. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election</td>
<td>170</td>
</tr>
</tbody>
</table>
### INDEX

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§4-10-4</td>
<td>Termination of governmental entities or programs</td>
<td>171</td>
<td>1356</td>
</tr>
<tr>
<td>§11A-1-3</td>
<td>Accrual; time for payment; interest on delinquent taxes</td>
<td>174</td>
<td>1391</td>
</tr>
<tr>
<td>§11-3-9</td>
<td>Property exempt from taxation</td>
<td>173</td>
<td>1388</td>
</tr>
<tr>
<td>§11-23-3a</td>
<td>Meaning of terms; general rule</td>
<td>179</td>
<td>1439</td>
</tr>
<tr>
<td>§11-23-5</td>
<td>Apportionment of tax base</td>
<td>179</td>
<td>1439</td>
</tr>
<tr>
<td>§11-13C-14</td>
<td>Restrictions and limitations on credits allowed by this article</td>
<td>176</td>
<td>1417</td>
</tr>
<tr>
<td>§11-15-2</td>
<td>Definitions</td>
<td>175</td>
<td>1394</td>
</tr>
<tr>
<td>§11-15-9</td>
<td>Exemptions</td>
<td>175</td>
<td>1400</td>
</tr>
<tr>
<td>§11-15-33</td>
<td>Effective date</td>
<td>175</td>
<td>1411</td>
</tr>
<tr>
<td>§11-24-3</td>
<td>Meaning of terms; general rule</td>
<td>179</td>
<td>1446</td>
</tr>
<tr>
<td>§11-24-13</td>
<td>Returns; time for filing</td>
<td>179</td>
<td>1447</td>
</tr>
<tr>
<td>§11-24-13a</td>
<td>Method of filing for business taxes</td>
<td>179</td>
<td>1447</td>
</tr>
<tr>
<td>§11-24-23a</td>
<td>Credit for qualified rehabilitated buildings investment</td>
<td>177</td>
<td>1432</td>
</tr>
<tr>
<td>§11-24-23b</td>
<td>Definitions</td>
<td>177</td>
<td>1432</td>
</tr>
<tr>
<td>§11-24-23c</td>
<td>Procedures</td>
<td>177</td>
<td>1433</td>
</tr>
<tr>
<td>§11-24-23d</td>
<td>Standards</td>
<td>177</td>
<td>1433</td>
</tr>
<tr>
<td>§11-24-23e</td>
<td>Fees</td>
<td>177</td>
<td>1433</td>
</tr>
<tr>
<td>§11-24-23f</td>
<td>Termination of credit by law</td>
<td>177</td>
<td>1434</td>
</tr>
<tr>
<td>§11-1C-1</td>
<td>Legislative findings</td>
<td>172</td>
<td>1360</td>
</tr>
<tr>
<td>§11-1C-2</td>
<td>Definitions</td>
<td>172</td>
<td>1361</td>
</tr>
<tr>
<td>§11-1C-3</td>
<td>Property valuation training and procedures commission generally; appointment; term of office; meetings; compensation</td>
<td>172</td>
<td>1362</td>
</tr>
<tr>
<td>§11-1C-4</td>
<td>Commission powers and duties; rule making</td>
<td>172</td>
<td>1364</td>
</tr>
<tr>
<td>§11-1C-5</td>
<td>Tax commissioner powers and duties</td>
<td>172</td>
<td>1366</td>
</tr>
<tr>
<td>§11-1C-6</td>
<td>Required training for assessors, their staffs and county commissioners</td>
<td>172</td>
<td>1369</td>
</tr>
<tr>
<td>§11-1C-7</td>
<td>Duties of county assessors; property to be appraised at fair market value; exceptions; initial equalization; valuation plan</td>
<td>172</td>
<td>1370</td>
</tr>
<tr>
<td>§11-1C-8</td>
<td>Additional funding for assessors' offices; maintenance funding</td>
<td>172</td>
<td>1372</td>
</tr>
<tr>
<td>§11-1C-9</td>
<td>Periodic valuations</td>
<td>172</td>
<td>1374</td>
</tr>
<tr>
<td>§11-1C-10</td>
<td>Valuation of industrial property and natural resources property by tax commissioner; penalties; methods; values sent to assessors</td>
<td>172</td>
<td>1374</td>
</tr>
<tr>
<td>§11-1C-11</td>
<td>Managed timberland</td>
<td>172</td>
<td>1378</td>
</tr>
<tr>
<td>§11-1C-12</td>
<td>Board of equalization and review; assessments; board of public works</td>
<td>172</td>
<td>1379</td>
</tr>
<tr>
<td>§11-1C-13</td>
<td>Severability</td>
<td>172</td>
<td>1380</td>
</tr>
</tbody>
</table>
### TAXATION—(continued):

#### Levies

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§11-8-6e</td>
<td>Effect on levy rate when appraisal results in tax increase: public hearings</td>
<td>172</td>
<td>1380</td>
</tr>
<tr>
<td>§11-8-6f</td>
<td>Effect on school board levy rate when appraisal results in tax increase</td>
<td>172</td>
<td>1384</td>
</tr>
</tbody>
</table>

#### Personal Income Tax

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§11-21-8a</td>
<td>Credit for qualified rehabilitated buildings investment</td>
<td>177</td>
<td>1429</td>
</tr>
<tr>
<td>§11-21-8b</td>
<td>Definitions</td>
<td>177</td>
<td>1430</td>
</tr>
<tr>
<td>§11-21-8c</td>
<td>Procedures</td>
<td>177</td>
<td>1431</td>
</tr>
<tr>
<td>§11-21-8d</td>
<td>Standards</td>
<td>177</td>
<td>1431</td>
</tr>
<tr>
<td>§11-21-8e</td>
<td>Fees</td>
<td>177</td>
<td>1431</td>
</tr>
<tr>
<td>§11-21-8f</td>
<td>Termination of credit by law</td>
<td>177</td>
<td>1431</td>
</tr>
<tr>
<td>§11-21-9</td>
<td>Meaning of terms</td>
<td>178</td>
<td>1435</td>
</tr>
<tr>
<td>§11-21-18</td>
<td>West Virginia taxable income of resident estate or trust</td>
<td>175</td>
<td>1412</td>
</tr>
<tr>
<td>§11-21-55</td>
<td>Declaration of estimated tax</td>
<td>178</td>
<td>1435</td>
</tr>
<tr>
<td>§11-21-71a</td>
<td>Withholding tax on effectively connected income of nonresident partners, shareholders or beneficiaries</td>
<td>175</td>
<td>1413</td>
</tr>
</tbody>
</table>

#### Procedure and Administration

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§11-10-3</td>
<td>Application of this article</td>
<td>174</td>
<td>1391</td>
</tr>
</tbody>
</table>

#### Public School Support

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§18-9A-11</td>
<td>Computation of local share; appraisal and assessment of property</td>
<td>172</td>
<td>1386</td>
</tr>
</tbody>
</table>

#### TRAFFIC REGULATIONS:

#### Stopping, Standing and Parking

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§17C-13-6</td>
<td>Stopping, standing or parking privileges for disabled; qualification; application; violation</td>
<td>180</td>
<td>1449</td>
</tr>
</tbody>
</table>

#### TREASURER:

#### Accounts, Reports and General Provisions

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§12-4-13</td>
<td>Bank reconciliations; balancing state accounts</td>
<td>182</td>
<td>1463</td>
</tr>
</tbody>
</table>

#### Public Securities

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§12-5-5</td>
<td>Protection and handling of securities</td>
<td>181</td>
<td>1456</td>
</tr>
</tbody>
</table>

#### State Depositories

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§12-1-10</td>
<td>Treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records</td>
<td>181</td>
<td>1455</td>
</tr>
<tr>
<td>§12-1-13</td>
<td>Payment of banking services</td>
<td>181</td>
<td>1455</td>
</tr>
</tbody>
</table>

#### West Virginia Board of Investments

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§12-6-4</td>
<td>Officers; executive secretary; term; organization; board staff; surety bonds for members and employees</td>
<td>181</td>
<td>1456</td>
</tr>
<tr>
<td>§12-6-5</td>
<td>Powers of the board</td>
<td>181</td>
<td>1457</td>
</tr>
<tr>
<td>§12-6-6</td>
<td>Costs and expenses; fees for services; special revenue account; costs of determining third parties' liability; recoupment of investment losses</td>
<td>181</td>
<td>1459</td>
</tr>
<tr>
<td>§12-6-9</td>
<td>Permissible investments</td>
<td>181</td>
<td>1460</td>
</tr>
<tr>
<td>§12-6-9c</td>
<td>Authorization of additional investments</td>
<td>181</td>
<td>1462</td>
</tr>
<tr>
<td>§12-6-15</td>
<td>Audits</td>
<td>181</td>
<td>1462</td>
</tr>
</tbody>
</table>

#### TURNPIKE:

#### West Virginia Parkways, Economic Development and Tourism Authority

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§17-16A-18</td>
<td>Cessation of tolls; commuter pass system</td>
<td>183</td>
<td>1465</td>
</tr>
<tr>
<td>§17-16A-18a</td>
<td>Corridor “L” toll fees authorized; commuter pass; annual report</td>
<td>183</td>
<td>1466</td>
</tr>
</tbody>
</table>

#### UNCLAIMED PROPERTY:

#### Uniform Disposition of Unclaimed Property Act

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§36-8-8</td>
<td>Property held by courts and public officers and agencies</td>
<td>184</td>
<td>1470</td>
</tr>
<tr>
<td>§36-8-8a</td>
<td>Providing for recovery of abandoned property</td>
<td>184</td>
<td>1471</td>
</tr>
</tbody>
</table>
### Index

**UNCLAIMED PROPERTY**—(continued):

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§36-8-8b</td>
<td>Presumption of abandonment of personal property held by federal government</td>
<td>184</td>
<td>1471</td>
</tr>
<tr>
<td>§36-8-11</td>
<td>Report of abandoned property</td>
<td>184</td>
<td>1472</td>
</tr>
<tr>
<td>§36-8-16</td>
<td>Periods of limitation not a bar</td>
<td>184</td>
<td>1474</td>
</tr>
<tr>
<td>§36-8-18</td>
<td>Deposits of funds; trust and expense fund; records of deposits</td>
<td>184</td>
<td>1475</td>
</tr>
</tbody>
</table>

**UNEMPLOYMENT COMPENSATION:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§21A-4-6</td>
<td>Offices; meetings</td>
<td>185</td>
<td>1477</td>
</tr>
<tr>
<td>§21A-6-3</td>
<td>Disqualification for benefits</td>
<td>185</td>
<td>1484</td>
</tr>
</tbody>
</table>

**Employer Coverage and Responsibility**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§21A-5-10</td>
<td>Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates</td>
<td>185</td>
<td>1477</td>
</tr>
<tr>
<td>§21A-5-10a</td>
<td>Optional assessments on employers and employees</td>
<td>185</td>
<td>1483</td>
</tr>
</tbody>
</table>

**Employment Security Administration Fund**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§21A-9-9</td>
<td>Reed Act appropriations</td>
<td>185</td>
<td>1492</td>
</tr>
</tbody>
</table>

**Employment Security Debt Funds**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§21A-8A-8</td>
<td>Assessments; dedication of assessments; commissioner's authority to adjust assessments</td>
<td>185</td>
<td>1490</td>
</tr>
</tbody>
</table>

**General Provisions**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§21A-10-7</td>
<td>False representations; penalties</td>
<td>185</td>
<td>1492</td>
</tr>
<tr>
<td>§21A-10-8</td>
<td>Recovery of benefits paid on misrepresentation; limitations</td>
<td>185</td>
<td>1493</td>
</tr>
<tr>
<td>§21A-10-11</td>
<td>Requiring information; use of information; libel and slander actions prohibited</td>
<td>185</td>
<td>1493</td>
</tr>
<tr>
<td>§21A-10-19</td>
<td>Disclosure of information to child support agencies</td>
<td>185</td>
<td>1495</td>
</tr>
</tbody>
</table>

**UNIFORM STATE LAWS:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§29-1A-2a</td>
<td>Life members</td>
<td>186</td>
<td>1496</td>
</tr>
</tbody>
</table>

**VETERANS:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§9A-2-1</td>
<td>State homes for veterans</td>
<td>188</td>
<td>1507</td>
</tr>
</tbody>
</table>

**Transfer of Agencies and Boards**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5F-2-1</td>
<td>Transfer and incorporation of agencies and boards</td>
<td>66, 187</td>
<td>581, 1497</td>
</tr>
</tbody>
</table>

**WAYPORT AUTHORITY:**

**Wayport Authority**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§17-16C-1</td>
<td>Creation of authority</td>
<td>189</td>
<td>1509</td>
</tr>
<tr>
<td>§17-16C-2</td>
<td>Board of directors; members; officers; qualifications; terms; oath; compensation; quorum and delegation of power</td>
<td>189</td>
<td>1509</td>
</tr>
<tr>
<td>§17-16C-3</td>
<td>Executive director</td>
<td>189</td>
<td>1511</td>
</tr>
<tr>
<td>§17-16C-4</td>
<td>Purposes of authority; transportation development</td>
<td>189</td>
<td>1511</td>
</tr>
<tr>
<td>§17-16C-5</td>
<td>Definitions</td>
<td>189</td>
<td>1513</td>
</tr>
<tr>
<td>§17-16C-6</td>
<td>Powers and duties of authority</td>
<td>189</td>
<td>1513</td>
</tr>
<tr>
<td>§17-16C-7</td>
<td>Wayport revenue bonds—Generally</td>
<td>189</td>
<td>1515</td>
</tr>
<tr>
<td>§17-16C-8</td>
<td>Wayport revenue bonds—Trust agreements</td>
<td>189</td>
<td>1518</td>
</tr>
<tr>
<td>§17-16C-9</td>
<td>Tolls, rents, fees, charges and revenues</td>
<td>189</td>
<td>1519</td>
</tr>
<tr>
<td>§17-16C-10</td>
<td>Trust funds</td>
<td>189</td>
<td>1520</td>
</tr>
<tr>
<td>§17-16C-11</td>
<td>Remedies</td>
<td>189</td>
<td>1520</td>
</tr>
<tr>
<td>§17-16C-12</td>
<td>Exemption from taxes</td>
<td>189</td>
<td>1521</td>
</tr>
<tr>
<td>§17-16C-13</td>
<td>Preliminary expenses</td>
<td>189</td>
<td>1522</td>
</tr>
<tr>
<td>§17-16C-14</td>
<td>Wayport revenue refunding bonds—Generally</td>
<td>189</td>
<td>1522</td>
</tr>
<tr>
<td>§17-16C-15</td>
<td>Special West Virginia Wayport Authority operations fund</td>
<td>189</td>
<td>1523</td>
</tr>
<tr>
<td>§17-16C-16</td>
<td>Severability</td>
<td>189</td>
<td>1520</td>
</tr>
</tbody>
</table>
## Index

<table>
<thead>
<tr>
<th>WIC PROGRAM:</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Supplementary Food Program for Women, Infants and Children (WIC)</td>
<td>§16-2G-1. Voucher or coupon redemption and payment</td>
<td>11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>WOMEN'S COMMISSION:</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women's Commission</td>
<td>§29-20-1. Creation; membership; appointment and terms of members; organization; reimbursement for expenses</td>
<td>190</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>WORKERS' COMPENSATION:</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coal-Workers Pneumoconiosis Fund</td>
<td>§23-4B-8. Separable from workers' compensation fund</td>
<td>12</td>
</tr>
<tr>
<td>Disability and Death Benefits</td>
<td>§23-4-3d. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-3a. Wrongfully seeking payment for services or supplies; criminal penalties</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-3b. Creation of health care advisory panel</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-3c. Suspension or termination of providers of health care</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-6. Classification of disability benefits</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-6d. Benefits payable to part-time employees</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-7b. Trial return to work</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-8. Physical examination of claimant</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-8c. Occupational pneumoconiosis board—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-9. Physical and vocational rehabilitation</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-14. Computation of benefits</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-15b. Determination of nonmedical questions by commissioner; claims for occupational pneumoconiosis; hearing</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>§23-4-19. Wrongfully seeking compensation; criminal penalties; restitution</td>
<td>12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Discriminatory Practices</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§23-5A-3. Termination of injured employee prohibited; re-employment of injured employees</td>
<td>12</td>
<td>1723</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employers and Employees Subject to Chapter; Extraterritorial Coverage</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§23-2-4. Classification of industries; accounts, rate of premiums</td>
<td>12</td>
<td>1667</td>
</tr>
<tr>
<td>§23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond</td>
<td>12</td>
<td>1669</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td>Ch.</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>§23-2-9</td>
<td>Election of employer to provide own system of compensation; mandatory participation in second injury reserve of surplus fund and exceptions; election to provide catastrophe coverage</td>
<td>12</td>
</tr>
<tr>
<td>§23-2-14</td>
<td>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</td>
<td>12</td>
</tr>
<tr>
<td>§23-2-15</td>
<td>Liabilities of successor employer; waiver of payment by commissioner; assignment of predecessor employer's premium rate to successor</td>
<td>12</td>
</tr>
<tr>
<td>§23-2-16</td>
<td>Acceptance or assignment of premium rate</td>
<td>12</td>
</tr>
<tr>
<td>§23-2-17</td>
<td>Employer right to hearing; content of petition; appeal</td>
<td>12</td>
</tr>
<tr>
<td>§23-2-18</td>
<td>Rules</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>General Administrative Provisions</td>
<td></td>
</tr>
<tr>
<td>§23-1-1</td>
<td>Workers' compensation commissioner; appointment; term; oath; bond; conflict of interest; compensation; official seal; legal services; references to director deemed to mean commissioner; references to workmen's compensation deemed to mean workers' compensation</td>
<td>191</td>
</tr>
<tr>
<td></td>
<td>Review</td>
<td></td>
</tr>
<tr>
<td>§23-5-1</td>
<td>Notice by commissioner of decision; objections and hearing; appeal</td>
<td>12</td>
</tr>
<tr>
<td>§23-5-1a</td>
<td>Application by employee for further adjustment of claim—Objection to modification; hearing</td>
<td>12</td>
</tr>
<tr>
<td>§23-5-1b</td>
<td>Refusal to reopen claim; notice; objection</td>
<td>12</td>
</tr>
<tr>
<td>§23-5-1c</td>
<td>Application by employer for modification of award—Objection to modification; hearing</td>
<td>12</td>
</tr>
<tr>
<td>§23-5-1d</td>
<td>Refusal of modification; notice; objection</td>
<td>12</td>
</tr>
<tr>
<td>§23-5-1e</td>
<td>Time periods for objections and appeals; extensions</td>
<td>12</td>
</tr>
<tr>
<td>§23-5-1f</td>
<td>Compromise and settlement of permanent partial disability awards</td>
<td>12</td>
</tr>
<tr>
<td>§23-5-1g</td>
<td>Creation of office of administrative law judges; powers of chief administrative law judge and said office</td>
<td>12</td>
</tr>
<tr>
<td>§23-5-1h</td>
<td>Hearings on objections to commissioner's decisions by office of administrative law judges</td>
<td>12</td>
</tr>
<tr>
<td>§23-5-1i</td>
<td>Appeal from administrative law judge decision to appeal board</td>
<td>12</td>
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<tr>
<td>§23-5-3</td>
<td>Appeal to board; procedure; remand and supplemental hearing</td>
<td>12</td>
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<tr>
<td>§23-5-3a</td>
<td>Continuances and supplemental hearings; claims not to be denied on technicalities</td>
<td>12</td>
</tr>
<tr>
<td>§23-5-4b</td>
<td>Jurisdictional findings and decisions appealable</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Subrogation</td>
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<tr>
<td>§23-2A-1</td>
<td>Subrogation limitations; effective date</td>
<td>12</td>
</tr>
<tr>
<td>§23-2A-2</td>
<td>Study of subrogation</td>
<td>12</td>
</tr>
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<td></td>
<td>Workers' Compensation Fund</td>
<td></td>
</tr>
<tr>
<td>§23-3-1</td>
<td>Compensation fund; surplus fund; catastrophe and catastrophe payment defined; second injury and second injury reserve; compensation by employers</td>
<td>12</td>
</tr>
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